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APPENDIX

DEC 1 197
E. ROBERT SEAVER, C

Supreme Court of the United States

TERM, 1971

No. 70-5106

RICHARD GRAYNED,

Appellant,

—v.—

CITY OF ROCKFORD

APPEAL FROM THE SUPREME COURT OF ILLINOIS

FILED APRIL 8, 1971
PROBABLE JURISDICTION NOTED OCTOBER 12, 1971

Supreme Court of the United States

TERM, 1971

No. 70-5106

RICHARD GRAYNED,

Appellant,

—v.—

CITY OF ROCKFORD

APPEAL FROM THE SUPREME COURT OF ILLINOIS

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IN THE CIRCUIT COURT OF THE
17th JUDICIAL CIRCUIT

WINNEBAGO COUNTY, ILLINOIS

CITY OF ROCKFORD

MAGISTRATE DIVISION

COMPLAINT

Complaint and information by the City of Rockford, Illinois hereinafter called the complainant, being duly sworn, on oath says that on or about April 25, 1969, in the said Municipality, County and State, the offense of Wilfully causing diversion of good order of public school in session in violation of Section 19.2(a) Art. _____ of Chapter 28 of the City Ordinances of said Municipality, was committed, and that affiant has reasonable grounds to believe and does believe that Richard Dean Grayned hereinafter called the defendant, then and there was guilty of committing the same, in this, to wit: that While on school grounds and while school was in session, did wilfully make and assist in the making of a diversion which tended to disturb the peace in good order of the school session and class thereof. Contrary to the form of the statute in such case made and provided and against the peace and dignity of the People of the said Municipality and the said complaint therefore prays that a warrant may be issued for the arrest of the said defendant, and that he may be dealt with according to law.

Complainant City of Rockford by James L. Donohue

Address 401 West State Street (Room 203)
Rockford, Illinois 61101

Phone (815) 962-7083

Signed and sworn to before me _____, 19__

_____ [SEAL]

Magistrate

IN THE CIRCUIT COURT OF THE
17th JUDICIAL CIRCUIT
WINNEBAGO COUNTY, ILLINOIS

CITY OF ROCKFORD
MAGISTRATE DIVISION

COMPLAINT

Complaint and information by the City of Rockford, Illinois hereinafter called the complainant, being duly sworn, on oath says that on or about April 25, 1969, in the said Municipality, County and State, the offense of Disorderly Conduct in violation of Section 18.1(i) Art. _____ of Chapter 28 of the City Ordinances of said Municipality, was committed and that affiant has reasonable grounds to believe and does believe that Richard Dean Grayned hereinafter called the defendant, then and there was guilty of committing the same, in this, to wit: that Picketed or demonstrated on a public way within one hundred fifty (150) feet of a secondary school building while the school was in session and that said subject was not picketing with regards to any labor dispute. Contrary to the form of the statute in such case made and provided and against the peace and dignity of the People of the said Municipality and the said complaint therefore prays that a warrant may be issued for the arrest of the said defendant, and that he may be dealt with according to law.

Complainant City of Rockford by James L. Donohue

Address 401 West State Street (Room 203)
Rockford, Illinois 61101

Phone (815) 962-7083

Signed and sworn to before me _____, 19__

_____ [SEAL]

Magistrate

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE
17th JUDICIAL CIRCUIT
COUNTY OF WINNEBAGO
CITY OF ROCKFORD

AT LAW

Case No. 6328 and 6383

CITY OF ROCKFORD, PLAINTIFF

vs.

RICHARD DEAN GRAYNED and ANDREW M. FREEMAN, DEFENDANTS

MOTION TO AMEND COMPLAINT BY ADDITION OF ADDITIONAL CHARGE

COMES NOW the CITY OF ROCKFORD and requests this Court to allow it to include an additional charge of Disorderly Conduct under City Ordinance, Chapter 28, Section 18.1(i) in addition to the charge already levied of Chapter 28, Section 19.2(a). That a copy of said ordinance is attached to this motion to amend Complaint by addition of additional charge. A copy of Rockford City Ordinance, Chapter 28, Section 19.2(a) is also attached to this Motion.

CITY OF ROCKFORD
Plaintiff

By: _____
JAMES L. DONOHUE
Assistant City Attorney

STATE OF ILLINOIS)
) ss
COUNTY OF WINNEBAGO)

IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT
WINNEBAGO COUNTY, ILLINOIS

CITY OF ROCKFORD, PLAINTIFF

vs.

MARVIN WARD	No. 6316
WILLIAM IRA TRIPPLETT, JR.	6317
MONTIE E. THOMPSON	6318
HERBERT JEROME PARKER	6319
LEONARD DELL MCNEELY	6320
HENRY LOUIS MCINTOSH	6321
JIMMIE LEE KENT	6322
ROY L. KENT	6323
WILLIE T. KENT	6324
DUANE LESLIE JENKINS	6325
BENNIE HORTON	6326
RANDOLPH LARRY HAWTHORNE	6327
AARON A. DOTSON	6329
TOM ALVIN ALLEN	6330
HAROLD K. BELL	6331
GREGORY LEE BEDFORD	6381
MIKE ELLENA	6382
RICHARD DEAN GRAYNED	6383
JEFF LYNN HARRIS	6384
RALPH ANTHONY IMBERT	6385
PARKER PARNELL JENKINS	6386
OTHA LEE GRAYNED	6387
JEFF LYNN SMITH	6388
COLLIER RUTLEDGE, JR.	6389
ERNEST NELSON RICHARDS	6390
ROBERT PEOPLES, JR.	6391
MIKE RAY OLIVER	6392
EXCELL LEWIS	6393 and 7680
GARY SHERMAN COOPER	6394
WILLIAM ARTIS HUDSON	6395

CHARLES L. HAWKINS	6396
DWIGHT HALL	6397
GREGORY CECIL DUE	6398
JOHN DEREK BACON	6399
ALBERT CLAIBORNE	Unknown
BOBBY JOE CURTIS	7676
RAYMOND HAROLD HUGGARD	7678
LARRY LEE	7679
MIKE BELL	7673
JAMES ELLIS	7677

DEFENDANTS

MOTION

NOW COMES MARVIN WARD, WILLIAM IRA TRIPPLETT, JR., MONTIE E. THOMPSON, HERBERT JEROME PARKER, LEONARD DELL McNEELY, HENRY LOUIS McINTOSH, JIMMIE LEE KENT, ROY L. KENT, WILLIE T. KENT, DUANE LESLIE JENKINS, BENNIE HORTON, RANDOLPH LARRY HAWTHORNE, AARON A. DOTSON, TOM ALVIN ALLEN, HAROLD K. BELL, GREGORY LEE BEDFORD, MIKE ELLENA, JEFF LYNN HARRIS, RALPH ANTHONY IMBERT, PARKER PARNELL JENKINS, OTHA LEE GRAYNED, JEFF LYNN SMITH, COLLIER RUTLEDGE, JR., ERNEST NELSON RICHARDS, ROBERT PEOPLES, JR., MIKE RAY OLIVER, EXCELL LEWIS, GARY SHERMAN COOPER, WILLIAM ARTIS HUDSON, CHARLES L. HAWKINS, DWIGHT HALL, GREGORY CECIL DUE, JOHN DEREK BACON, ALBERT CLAIBORNE, BOBBY JOE CURTIS, RAYMOND HAROLD HUGGARD, LARRY LEE, MIKE BELL, JAMES ELLIS, and RICHARD DEAN GRAYNED by their attorneys McCOY, MING & BLACK and moves the Court to dismiss the charges pending against them for violation of Chapter 28, Section 19.2a of the Rockford Code of Ordinances on the ground that the ordinance is unconstitutional in that it violates the First and Fourteenth Amendments of the United States Constitution.

RICHARD GRAYNED by his attorneys McCOY, MING & BLACK moves the Court to dismiss the charge pending against him for violation of Chapter 28, Section 18.1(i) of the Rockford Code of Ordinances on the ground that the ordinance is unconstitutional in that it violates the First and Fourteenth Amendments of the United States Constitution.

Brief in support of this motion is hereto attached.

Marvin Ward, William Ira Tripplett, Jr., Montie E. Thompson, Herbert Jerome Parker, Leonard Dell McNeely, Henry Louis McIntosh, Jimmie Lee Kent, Roy L. Kent, Willie T. Kent, Duane Leslie Jenkins, Bennie Horton, Randolph Larry Hawthorne, Aaron A. Dotson, Tom Alvin Allen, Harold K. Bell, Gregory Lee Bedford, Mike Ellena, Jeff Lynn Harris, Ralph Anthony Imbert, Parker Parnell Jenkins, Otha Lee Grayned, Jeff Lynn Smith, Collier Rutledge, Jr., Ernest Nelson Richards, Robert Peoples, Jr., Mike Ray Oliver, Excell Lewis, Gary Sherman Cooper, William Artis Hudson, Charles L. Hawkins, Dwight Hall, Gregory Cecil Due, John Derek Bacon, Albert Claiborne, Bobby Joe Curtis, Raymond Harold Huggard, Larry Lee, Mike Bell, James Ellis, Richard Dean Grayned

By _____

McCoy, Ming & Black
Attorney for Defendants
123 West Madison Street
Chicago, Illinois 60602
FRanklin 2-1106

BRIEF

RICHARD GRAYNED is charged with violation of Chapter 28, Section 19.2a and Chapter 28, Section 18.1 (i) of the Rockford Code of Ordinances. The other captioned defendants are only charged with violation of Chapter 28, Section 19.2a. Both of the ordinances cited above are unconstitutional in that they violate the First and Fourteenth Amendments to the Federal Constitution.

The standards to be used in determining the constitutionality of the subject ordinances is most succinctly laid out in *Landry* v. *Daley* 280 F Supp 938 (USDC ND Ill Ed, 1967). Judge Will rendered a scholarly decision wherein he explained that the question of the constitutionality of a statute or ordinance depends upon its certainty and its breadth. By certainty he referred to whether it met the standards of Procedural Due Process meaning whether there was from the language of the statute fair notice of what action was prohibited so one could avoid violating it, and also whether there were sufficent standards for a proper adjudication of guilt. (See *Lanzetta* v *New Jersey* 59 Sup. Crt. 618 (1939)). By breadth, Judge Will referred to whether the statute satisfied Substantive Due Process meaning whether the normal meaning of the statutory language was so broad that it would allow the discretion of police or other officials to apply it to conduct protected by the Constitution. As stated in *Zwickler* v *Koota* 389 US 241, 88 SCT 391, 396 (1967) with regard to such construction

> "that 'a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms'"

The factors which Judge Will considered in *Landry* to determine whether the statute was clear and narrow within the requirements above outlined are as follows:

1. whether a substantial interest worthy of protection is apparent from the language of the statute;
2. whether the terms of the statute are susceptible to objective measurement by men of common intelligence;
3. whether those in charge of enforcement have only limited discretion;
4. if penal, whether some element of knowledge or intent to obstruct a state interest is required; and
5. whether clarity of the statute or ordinance depends on cross references to interrelated enactments.

Chapter 28, Section 19.2a of the Rockford Code of Ordinances provides in part that:

> "no person, while on public or private grounds adjacent to any building in which a school or any class thereof is in session shall willfully make or assist in the making of any noise or diversion which disturbs or tends to disturb the peace or good order of such school session or class thereof."

This ordinance is unconstitutional and void on its face in that it does not satisfy the requirements of procedural due process, with the corresponding result that it is too broad since it leaves discretion in the police or other officials to apply it to conduct which may be constitutional. (See *Stromberg* v *California* 283 US 359, 51 SCT 532 (1931)).

The City has a valid interest in having an orderly undisturbed school session conducive to the students learning processes. Therefore, some reasonable regulation would be proper to see that such an environment is maintained.

The ordinance passed by the City is not reasonable regulation. The language of this ordinance prohibiting the making of a "noise or diversion which disturbs or tends to disturb the peace or good order of such school session or class thereof" is vague and does not give fair notice of the prohibited conduct. A "diversion" is defined in Webster's Third New International Dictionary, 1966

Edition as "An act or an instance of diverting (as the mind or attention) from some activity or concern." A man of ordinary intelligence would not be able to determine objectively what conduct is prohibited by the ordinance. (See *Landry* v *Daley* 280 F Supp 986 DCND Ill Ed, 1968.) There may be various subjective views of what may tend to disturb the order of the school session or class. It is possible that any object standing or activity occurring outside the school building may divert or tend to divert the class or school session. Thus a person or persons could violate this statute merely by standing on the sidewalk adjacent to the school in brightly colored or unusual clothes.

Because of the vagueness of the language of the ordinance, there is a large diseretion left in the police to decide what activity may or may not disturb or tend to disturb the school session, and therefore the ordinance could be applied to the peaceful exercise of free speech and assembly and the right to petition for the redress of grievances. *Cox* v *State of Louisiana* 379 US 536, 85 SCT 453 (1965).

Chapter 28, Section 18.1(i) of the Rockford Code of Ordinances reads in part that:

> "a person commits disorderly conduct when he knowingly pickets or demonstrates in a public way within 150 feet of any primary or secondary school building while the school is in session . . . provided that this subsection does not prohibit the peaceful picketing of any school involved in a labor dispute . . ."

This ordinance is unconstitutional and void on its face for it is overbroad and violates the equal protection clause of the 14th Amendment.

As stated before a municipality has an interest in maintaining a peaceful and orderly school session. It also has the right to regulate traffic on the public way. Here it is unclear from the terms of this ordinance what interest with respect to the school session the City Council is seeking to protect. The ordinance allows picketing in labor disputes within 150 feet of the school building

during the school sessions, and allows all picketing and demonstrations outside of the 150 foot line during the school session. It is not therefore apparent from the ordinance what interest is protected by prohibiting non-labor picketing on a public way within 150 feet, which interest is not endangered by allowing labor picketing within and all picketing outside the 150 foot line. It is possible that this ordinance can be used to prohibit the exercise of constitutionally protected speech and assembly to which the defendants herein have a right (See *Cox* v *State of Louisiana* (Supra), *Edwards* v *South Carolina* 372 US 229, 83 SCT 680 (1963)) and therefore it is unconstitutional since it is overbroad.

The ordinance also is unconstitutional as a violation of the equal protection of the laws clause of the Fourteenth Amendment for it is discriminatory in that though the City may control traffic on its public ways, it must be reasonable. This ordinance does more than control traffic it discriminates in that it allows picketing on the public way within the 150 feet during labor disputes but prohibits all other picketing therein. This type of unconstitutional discrimination was noted in footnote 14 of the Court's decision in *Cox* v *State of Louisiana* (Supra) showing the statute was not a mere regulation of traffic but was intended to restrict speech. Justice Black in his concurring opinion discussed this exception as being an unconstitutional denial of free speech to some because the state was determining what views could be expressed on its streets which is censorship, as well as an unconstitutional classification which allowed some to speak while denying the right to others.

Respectfully submitted

McCoy, Ming & Black

STATE OF ILLINOIS)
) ss
COUNTY OF WINNEBAGO)

IN THE CIRCUIT COURT OF THE
17th JUDICIAL CIRCUIT
COUNTY OF WINNEBAGO
MAGISTRATE DIVISION

No. 6383 et al

CITY OF ROCKFORD, ILLINOIS, a Municipal Corporation,
PLAINTIFF

vs.

RICHARD GRAYNED, ET AL, DEFENDANTS

SUPPLEMENTAL BRIEF IN SUPPORT OF
DEFENDANTS MOTION TO DISMISS

Attached is a copy of a letter mailed to Judge Richard N. DeGunther which presents the City's position with respect to Defendant's Motion to Dismiss all of the cases arising out of the arrests of students on April 25, 1969.

The plaintiff cite the *Board of Education of Community Unit School District* v *Redding*, 32 Ill 2d 567, 207, NE 2d 427, 430 (1965). That case involved a suit by the Board of Education seeking an injunction against a strike and picketing by custodial employees of the school. The Supreme Court of Illinois stated the "scope of our review is limited to a consideration of whether such employees may strike against their school board employer and whether they may picket to support their strike." They then reversed the trial court and held that the strike by public employees should be enjoined as being illegal and that the picketing in support of this illegal strike should be enjoined.

The motion before this court does not concern picketing in support of an illegal strike, nor does it concern a suit for an injunction. The motion before this court seeks a decision of the issue of whether Sections 19.2a

and 18.1(i) are unconstitutional on their face as being vague and overboard. Plaintiff's cited case does not go to that issue either by factual situation or issues decided by the court.

Plaintiff's cited case does, however, support defendants position that Section 18.1(i) is an unconstitutional discrimination between labor unions and other organizations. This case indicates that labor unions do not have unrestricted rights to picket which are different from other persons rights, yet Section 18.1(i) gives them the special rights to unrestricted picketing within 150 feet of the school building while restricting others from exercising the rights.

Respectfully submitted

McCoy, Ming & Black

By _____

Sophia H. Hall

[Affidavit of Service (Omitted in Printing)]

NORTH, NORTH & OHLSON
LAWYERS
216 North Court Street
Rockford, Illinois
61103

September 8, 1969

Frank P. North
David A. North
Larry E. Ohlson

Area Code 815
Telephone 963-9619

Circuit Court Magistrate
Richard N. DeGunther
Winnebago County Court House
Rockford, Illinois

Re: City of Rockford vs. Grayned, #6383, and companion cases.

Dear Judge DeGunther:

This morning counsel for both parties took a considerable amount of the Court's time in presenting their arguments for and against Attorney Hall's Motion attacking the constitutionality of both Section 19.2A and Section 18.1 (i), Chapter 28 of the City of Rockford Code of Ordinances. As I emphasized this morning, it is the City's position that because of the extreme importance in maintaining an orderly and undisturbed atmosphere in the public schools, that as a reasonable exercise of the City's police power the City has the authority to pass and enforce the subject ordinances. The constitutional guarantees of free speech and freedom of assembly have no priority over the maintaining of orderly classrooms. Picketing is not a guaranteed right under all circumstances, as I pointed out to the Court this morning. The cases cited by Attorney Hall do not deal with the ordinances in issue, nor do her cases deal at all with the interest of a City in maintaining orderly schools.

There is a rather recent Illinois case, however, which the City feels supports its argument as to the City's overriding interest in maintaining effective schools in the face of the constitutional arguments heretofore made. The case is *Board of Education of Community Unit School Dist.* v. *Redding*, 32 Ill. 2d 567, 207 NE 2d 427. That case did not involve an interpretation of ordinances similar to those in issue, but it did concern a labor dispute between janitors who had been picketing schools in said district, thereby disrupting classes, and a Board of Education. The Supreme Court held that the trial court erred in failing to enjoin said picketing. In that case the usual constitutional arguments of free speech, etc. were made, but as the Court stated, at page 432 of NE Reports, "a State is not required to tolerate in all places and all circumstances even peaceful picketing by an individual." Most importantly in said case, on page 432 of the NE Reports, the Court comments as follows, "Apart from this, however, the effect of the influences exerted by the picketing was to impede and obstruct a vital and important governmental function—a proper and efficient education of our children—making its curtailment necessary to protect the patently overriding public interest."

It is just such a "patently overriding public interest" that motivated the City Council of Rockford to pass the subject ordinances for the protection of the schools as the preamble to Section 19.2A states. As to said section, a person who conducts himself so as to disturb a school in session runs the risk of prosecution under said ordinance and whether or not the conduct involved violates the ordinace depends entirely on the nature of the evidence as to what effect said conduct had on the classrooms in session. Therefore, the enforcement of Section 19.2A does not rest, as Attorney Hall states, in the discretion of the police who make an arrest pursuant to said ordinance, but it lies within the province of the

Court and the jury to determine whether or not, in fact, a violation has occurred.

Respectfully submitted,

/s/ Larry E. Ohlson
LARRY E. OHLSON
Assistant City Attorney

LEO:hh

cc: Atty. Sophia Hall
123 W. Madison Street
Chicago, Illinois

William E. Collins
Corporation Counsel
City Hall Building
Rockford, Illinois

CIRCUIT COURT—17th JUDICIAL CIRCUIT
MAGISTRATE DIVISION

Winnebago County Court House
Rockford, Illinois 61101

Magistrates
Robert G. Coplan
Robert G. Gemignani
Ralph H. Haen
Edwin J. Kotche
Robert E. Leake

Clerk of Court
Stanley W. Palmer
Telephone 965-7777
Area Code 815

September 16, 1969

Larry Ohlson
Attorney at Law
216 North Court St.
Rockford, Illinois

and

Sophia Hall
Attorney at Law
123 West Madison Street
Chicago, Illinois

In re: City of Rockford
vs. Richard Grayned
No. 6383

Dear Sir and Madam:

There are two charges against the defendant, Richard Grayned. Chapter 28, Section 19.2(a) provides in part that:

> "No person, while on public or private grounds adjacent to any building in which a school or any class thereof is in session shall willfully make or assist in the making of any noise or diversion which disturbs or tends to disturb the peace or good order of such school session or class thereof."

Chapter 28, Section 18.1(i) provides, in part, that:

> "A person commits disorderly conduct when he knowingly pickets or demonstrates in a public way within 150 feet of any primary or secondary school building while the school is in session . . . provided that this subsection does not prohibit the peaceful picketing of any school involved in a labor dispute . . ."

Miss Hall, attorney for the defendant, by her Brief and by her oral arguments has raised several points challenging the constitutionality of these Ordinances. Mr. Ohlson, on behalf of the City, has responded to these challenges by his oral argument and by his correspondence of September 8, 1969. The matters raised by counsel have been presented in a concise, scholarly and professional manner and do not require re-stating here. They are a part of the record.

I find that the language of Chapter 28, Section 19.2(a) is not so vague and indefinite that men of common intelligence will not be able to understand and regulate their conduct accordingly. I find Chapter 28, Section 18.1(i) contains reasonable and valid restrictions on the rights of picketing. I find that neither Ordinance violates the first or fourteenth amendment of the United States Constitution. I have, therefore, entered an order denying the defendant's motion to dismiss.

This decision reflects, to a great extent, my "philosophy" of the proper role of the trial court judge when the constitutionality of a law is challenged. I believe every possible presumption in favor of the constitutionality and validity of the law should be invoked and even if only a narrow interpretation of a Statute will preserve its constitutionality, it should be sustained.

The burden of persuasion that the law is unconstitutional is a heavy one. This is particularly true when, as here, the purpose of the law is to achieve some worthwhile end in the communities interest. That worthwhile end is, of course, the maintenance of an orderly and undisturbed atmosphere in the public schools.

This case is now scheduled for jury trial on Monday, October 6, 1969.

Very truly yours,

/s/ Richard N. DeGunther
RICHARD N. DEGUNTHER
Magistrate

RND:mg

No. City 6383

CITY OF ROCKFORD

vs.

RICHARD DEAN GRAYNED

VERDICT OF JURY

We, the jury, find the defendant, Richard Dean Grayned, Guilty of Disorderly Conduct, in that he picketed or demonstrated on a public way within one hundred fifty (150) feet of a secondary school building while the school was in session.

/s/ [Illegible]
/s/ Lester P. Doran
/s/ James D. Wells
/s/ Norma L. Gustafson
/s/ John H. Shipley
/s/ Max E. Ray
/s/ Kenneth Goodin
/s/ Everett Elliott
/s/ Mabel King
/s/ Jeannette Doherty
/s/ Pauline M. Clayton
/s/ Paul D. Forrest

_____

Foreman

3:40 4:30

No. City 6383

CITY OF ROCKFORD

vs.

RICHARD DEAN GRAYNED

VERDICT OF JURY

We, the jury, find the defendant, Richard Dean Grayned, Guilty of Wilfully causing diversion of good order of public school in session, in that while on school grounds and while school was in session, did wilfully make and assist in the making of a diversion which tended to disturb the peace and good order of the school session and class thereof.

/s/ [Illegible]
/s/ Lester P. Doran
/s/ James D. Wells
/s/ Norma L. Gustafson
/s/ John H. Shipley
/s/ Max E. Ray
/s/ Kenneth Goodin
/s/ Everett Elliott
/s/ Mabel King
/s/ Jeannette Doherty
/s/ Pauline M. Clayton
/s/ Paul D. Forrest

Foreman

[Filed Dec. 9, 1969, /s/ Anthony Colletti, Clerk of the Circuit Court, by /s/ C.C., Deputy]

COURT'S MEMORANDUM OF RULINGS ON MOTIONS

City of Rockford Motion to Amend Complaint by Addition of Additional charge (Filed August 12, 1969)—Heard and allowed

Defendant's motion to Dismiss filed October 6, 1969—Heard and denied.

Defendant's Petition filed October 6, 1969—heard and denied.

Defendant's Post-Trial Motion filed Nov. 6, 1969—Heard and denied.

(In addition, there was Defendant's Motion filed September 4, 1969. This motion was denied. The denial of that motion and the reasons therefore are a part of the record, appearing in the Court's letter of September 16, 1969.)

Docket No. 42895—Agenda 54—May, 1970

THE CITY OF ROCKFORD, APPELLEE

vs.

RICHARD GRAYNED, APPELLANT

MR. JUSTICE WARD delivered the opinion of the court:

On April 25, 1969, a demonstration was held in front of a high school in the city of Rockford. Richard Grayned, the defendant here, and 40 other demonstrators were arrested. A jury in the circuit court of Winnebago County found the defendant guilty of having violated, in April, 1969, sections 19.2(a) and 18.1(i) of the Code of the City of Rockford and he was fined $25 for each violation. A challenge to the constitutionality of these ordinances has been raised which gives this court jurisdiction on direct appeal.

Section 19.2(a) provides, insofar as is pertinent: "That no person, while on public or private grounds adjacent to any building in which a school or any class thereof is in session, shall willfully make or assist in the making of any noise or diversion which disturbs or tends to disturb the peace or good order of such school session or class thereof * * *."

The defendant first argues that this ordinance is unconstitutional on its face because its "terms are so vague that they fail to give the notice [of what conduct is prohibited] required by the Due Process Clause of the Fourteenth Amendment, and are so broad as to condemn the exercise of First Amendment freedoms." He complains relatedly that the ordinance vests unlimited discretion in law enforcement officials to determine the prohibited conduct. We have recently considered and sustained the constitutionality of ordinances and statutes which have been challenged on grounds of being vague and overly broad, including the grounds, which are complained of here, that proscribed conduct was not sufficiently specified and that police were given too broad a discretion in determining whether conduct was proscribed. (See *City of Chi-*

cago v. *Fort*, 46 Ill.2d 12; *City of Chicago* v. *Meyer*, 44 Ill.2d 1; *City of Chicago* v. *Lawrence*, 42 Ill.2d 461; *People* v. *Raby*, 40 Ill.2d 392.) Much of what we said there has application here and there is no necessity of repetitious or extended discussion. We do observe that while the defendant charges that terms appearing in the ordinance such as "noise" and "diversion" lack constitutional precision and are too indefinite, terms such as "alarm," "disturb," "interfere with," and "hinder" have been determined by us to comply with the constitutional requirements of specificity. (*City of Chicago* v. *Lawrence*, 42 Ill.2d 461; *People* v. *Raby*, 40 Ill.2d 392.) The terms here are not constitutionally objectionable.

It cannot be doubted that the State has a legitimate interest in preserving the peace and good order of its school system. (*Cf. Brown* v. *Louisiana*, 383 U.S. 131, 143, 15 L. Ed. 2d 637, 646, 86 S. Ct. 719; *Cox* v. *Louisiana*, 379 U.S. 559, 574, 13 L. Ed. 2d 487, 498, 85 S. Ct. 476.) While the ordinance may be susceptible to unconstitutional application, its constitutionality does not depend on conjectured misapplication. (*People* v. *Raby*, 40 Ill.2d 392, 397; *Landry* v. *Daley* (N.D. Ill. 1968), 280 F. Supp. 938, 960.) Although the argument that the ordinance has been unconstitutionally applied is not advanced in this case, our stated position is that we shall deal with extreme circumstances which might cause an unconstitutional application of an ordinance "if and when they arise." (*City of Chicago* v. *Fort*, No. 41945.) Our conclusion here is that the ordinance in question on its face is "a valid law dealing with conduct subject to regulation so as to vindicate important interests of society and that the fact that free speech is intermingled with such conduct does not bring with it constitutional protection." (*Cf. Cox* v. *Louisiana*, 379 U.S. 559, 564; 13 L. Ed. 2d 487, 492.)

It is next contended that section 19.2(a) is void because the penalty provisions applicable to the ordinance would exceed the power to impose penalties granted to municipalities by the legislature. Since section 19.2(a) itself does not contain a provision for a penalty, the general penalty section of the Code of Ordinances applies.

That section (City of Rockford Code of Ordinances, ch. 28, sec. 1.8) provides, so far as is pertinent: "It shall be unlawful for any person to violate or fail to comply with any provision of this Code and where no specific penalty is provided therefor, the violator shall be punished by a fine not less than ten dollars and not exceeding two hundred dollars or imprisonment for a term not exceeding six months or by both such fine or imprisonment. * * *."

The power of a municipality to provide for fines or penalties, as of the date of the violation here, did not include any authority to jail an offender, excepting the authority to jail in the event of failure to satisfy a fine or costs. (Ill. Rev. Stat. 1967, ch. 24, par. 1-2-1, par. 1-2-9.) Since a municipality can legislate only upon or with reference to that which has been authorized by the General Assembly (*People ex rel. Skokie Town House Builders, Inc.* v. *Village of Morton Grove*, 16 Ill.2d 183, 189), that portion of the Rockford ordinance which provided for incarceration attempted to exceed the conferred authority. We consider, however, that this defect does not affect the remainder of the penalty section, that is, section 1.8 absent the power to jail provision, or the section defining the substantive violation, that is, section 19.2(a). In *Brown* v. *City of Chicago*, 42 Ill.2d 501, 505, we said: "If what remains after the invalid portion is striken is complete in itself and capable of being executed wholly independently of that which is rejected, the invalid portion does not render void the entire ordinance unless it can be said that the city council would not have passed it with the invalid portion eliminated." We judge that the remainder of the ordinance is complete in itself and capable of being independently executed.

The last contention of the defendant is that his conviction for disorderly conduct under section 18.1(i) of the Rockford Code must be set aside for the reason that this section effects an unreasonable and arbitrary classification violative of the first and fourteenth amendments of the United States Constitution. The ordinance says: "A person commits disorderly conduct when he knowingly: * * * (i) Pickets or demonstrates on a pub-

lic way within 150 feet of any primary or secondary school building while the school is in session and one-half hour before the school is in session and one-half hour after the school session has been concluded, provided that this subsection does not prohibit the peaceful picketing of any school involved in a labor dispute; * * *." Rockford Code of Ordinances, ch. 28, sec. 18.1(i).

The defendant's complaint is directed at the part of the ordinance which provides that the peaceful picketing of a school involved in a labor dispute is not prohibited. However, we do not regard the classification in the ordinance as arbitrary. While a classification cannot, of course, be arbitrary, this court has said: "In order to authorize a judicial review of such classifications it must clearly appear that there is no fair reason for the law that would not require with equal force its extension to others not included. The legislature may determine upon what differences a distinction may be made for the purpose of statutory classification, between provisions otherwise having resemblance, if such power is not arbitrarily exercised and the distinction has a reasonable basis." (*Bagdonas* v. *Liberty Land and Investment Co.*, 309 Ill. 103, 109.) Too, we said in *People ex rel. Conservation District* v. *Lenover*, 43 Ill.2d 209, 219: "The burden of proving the arbitrariness of a classification is on the one who challenges it." And, at page 217: "Only if it can be said that the classification is clearly unreasonable and palpably arbitrary will a court declare the statute invalid." We cannot say that the city council of Rockford acted arbitrarily here in making the classification. Whether the council considered that the livelihood of persons involved in a labor dispute would typically be concerned or that it was familiar with the usual form of labor picketing or whether other considerations led to the classification we cannot say. But we can say it would be arbitrary for us to conclude from this distance under the circumstances that the act of the city was one of arbitrary discrimination.

The defendant would have us adopt the view of Justice Black in a concurring opinion in *Cox* v. *Louisiana*, 379 U.S. 559, 581, 13 L. Ed. 2d 487 at 502. There he

said that he regarded a statute's exemption of picketing and assembly by labor unions in protest of unfair treatment from the statute's operation as invidious discrimination. However, it must be observed that the expression was that of a single justice not that of the court. The court's decision on the point rested on other grounds.

Too, the statute there was a broad one, relating to the obstruction of public passageways, including streets, sidewalks and public buildings and it provided that labor organizations were exempt from its application. Justice Black considered that the statute was "trying to prescribe by law what matters of public interest people whom it allows on the streets may or not discuss." (379 U.S. at 581, 13 L. Ed. 2d at 502.) The statute here is a narrow one relating only to picketing or demonstrating within 150 feet of a school in session which is involved in a labor dispute. It does not have a potential consequence as the one Justice Black condemned.

Accordingly, the judgment of the circuit court of Winnebago County is affirmed.

Judgment affirmed.

MR. JUSTICE SCHAEFER, dissenting:

In my opinion section 18.1(i) of the Code makes arbitrary discrimination when it prohibits picketing on a public way within 150 feet of any school building but exempts the peaceful picketing of any school involved in a labor dispute. The considerations suggested in the opinion of the majority are not persuasive, and I am unable to conceive of any reason which would justify the discrimination effected by the ordinance.

UNITED STATES OF AMERICA

STATE OF ILLINOIS)
) ss.
SUPREME COURT)

AT A TERM OF THE SUPREME COURT, begun and held in Springfield, on Monday, the fourteenth day of September in the year of our Lord, one thousand nine hundred and seventy, within and for the State of Illinois.

PRESENT: ROBERT C. UNDERWOOD, CHIEF JUSTICE
JUSTICE WALTER V. SCHAEFER
JUSTICE DANIEL P. WARD
JUSTICE CASWELL J. CREBS
JUSTICE THOMAS E. KLUCZYNSKI
JUSTICE JOHN T. CULBERTSON, JR.
JUSTICE MARVIN F. BURT
WILLIAM J. SCOTT, ATTORNEY GENERAL
ROBERT G. MILEY, MARSHAL
ATTEST: JUSTIN TAFT, CLERK

BE IT REMEMBERED, that, to-wit: on the 29th day of September 1970, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said court, had and entered of record, to-wit:

No. 42895

CITY OF ROCKFORD, APPELLEE

vs.

RICHARD GRAYNED, APPELLANT

APPEAL FROM CIRCUIT COURT WINNEBAGO COUNTY 6383

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the

premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

THEREFORE, it is considered by the Court that the judgment of the Circuit Court of Winnebago County aforesaid, BE AFFIRMED IN ALL THINGS AND STAND IN FULL FORCE AND EFFECT, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said appellee recover of and from the said appellant costs by it in this behalf expended, to be taxed, and that it have execution therefor.

I, JUSTIN TAFT, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said court this ____ day of _____, 19__.

Clerk
Supreme Court of the
State of Illinois

IN THE SUPREME COURT OF ILLINOIS
January Term, A.D. 1970

No. 6383

CITY OF ROCKFORD, PLAINTIFF-APPELLEE

vs.

RICHARD GRAYNED, DEFENDANT-APPELLANT

Appeal from the Circuit Court of the Seventeenth Judicial Circuit, Magistrate's Division

Honorable Richard N. DeGunther, Judge Presiding

PETITION FOR REHEARING

The opinion of this Court was filed on September 29, 1970. Prior to this Court rendering its opinion defendant filed his motion for reargument of the case on the ground that he had not been given notice of the time of the oral argument. The denial of that motion so far has resulted in defendant being denied a full hearing on his appeal in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States.

This Court's opinion fails to deal with the specific language of Section 19.2a. Instead, it compares the language to language used in other ordinances held by it to be constitutional. The language used in these other ordinances, however, differs in purpose and effect from the language used in Section 19.2a thus the comparison is inappropriate.

In *City of Chicago* v. *Lawrence*, 42 Ill. 2d 461, 248 N.E. 2d 71 (1969) cited as authority in *City of Chicago* v. *Meyer*, 44 Ill. 2d 1, 253 N.E. 2d 400 (1969), the lan-

guage of the ordinance is directed to assisting the police officer in the performance of his duty by allowing him to arrest persons who hinder or interfere with him in that performance.

The terms "hinder" and "interfere with" as used in the ordinance are verbs which are confined and defined by the officers who are enforcing other laws, and who determine when their enforcement of those other laws is being hindered or interfered with. In that context this Court found those terms to be sufficiently descriptive of prohibited activities such that the terms were not violative of the Constitution.

Section 19.2a, which is at issue in this appeal, involves a very different context and purpose, one which is specifically directed toward activity like speech and assembly. The terms "noise" and "diversion" easily encompass the exercise of rights of free speech and peaceful assembly protected by the First Amendment. They are used in a context where the police officer is not the person who is protected, for the ordinance ostensibly protects other persons. The terms, however, are vague and broad, and they are not saved by being within the unique knowledge of the officer since he is not the subject of the ordinance. Thus the ordinance easily allows the officer discretion to deny rights of free speech and assembly. (DF.BF. 12-15). Consequently the circumstances of the two cases cited by this Court and the nature of the ordinance involved are not similar to Section 19.2a, and, therefore, any comparison of the terms, as a means of holding Section 19.2a constitutional, totally avoids the language of that ordinance.

The other cases cited by this Court, *City of Chicago* v. *Fort*, No. 41945, which cites *People* v. *Raby*, 40 Ill. 2d 392, 240 N.E. 2d 595 (1968), involve terms used in the Chicago disorderly conduct ordinance which is also so different from Section 19.2a that a comparison of the terms held constitutional there has no bearing on the constitutionality of the terms in Section 19.2a. In *People* v. *Raby* this Court said the ordinance was constitutional because it emphasized "unreasonable conduct" and that conduct's tendency to disturb. (40 Ill. 2d., 395, 397). The

terms "noise" and "diversion" cannot be compared to the terms "alarm" and "disturb" as they are used in the Chicago disorderly conduct ordinance. "Alarm" and "disturb" describe the *effect* of the "unreasonable conduct," whereas "noise" and "diversion" purport to describe the conduct itself. Thus this Court fails to deal with the question of whether the terms "noise" and "diversion" in Section 19.2a are so vague and broad that they fail to describe activity with sufficient clarity to avoid the unconstitutional application of the ordinance to the exercise of First Amendment freedoms.

The issue in this case is whether Section 19.2a is unconstitutional on its face. Defendant has shown that the language used is vague and overbroad. Not to make that determination in this case is to abandon this Court's responsibility to protect the exercise of rights guaranteed by the Constitution of the United States. This ordinance, through its vagueness, effectively prohibits any peaceful exercise of First Amendment freedoms by an average citizen who is concerned with the administration of schools in Rockford and seeks an alternative course of action to draw the attention of the community at large to his grievances, after other forms of petition for redress of grievances have failed.

This Court, in considering the question of whether Section 1.8 is void, states the issue as being whether the city council would have passed the law with the void part deleted (unnumbered page 3 of its opinion). After stating the issue, this Court ignores it. This Court instead usurps the legislative duties and prerogatives of the city council by picking and choosing from among the phrases within the section, and deciding which should be given effect and which should not.

The importance of the fact that this is a case dealing with the exercise of rights under the First Amendment becomes crucial when scrutinizing the classification by the city council of Rockford in distinguishing between the exercise of these freedoms by persons picketing in a labor dispute and persons picketing in support of other disputes such as minority student rights (DF BF 16). Section 18.1(i) imposes no limits on picketing where a

labor dispute is involved, except that it be peaceful. Yet other demonstrators are limited to picketing beyond 150 feet of the school premises. Labor has no special status or special right to the exercise of First Amendment freedoms and must be treated the same as other demonstrators. (DF BF 17-18). There is no reason for labor being given a special right for their concerns are no more important than a citizen's concern with curriculum or fair treatment of minority students. The First Amendment makes no distinction between what ideas are expressed by persons within its protection, yet this Court's decision would aid and abet the city council in making a distinction and thereby violating the Constitution.

CONCLUSION

We pray this Court to allow a rehearing on the issue of the constitutionality of these ordinances in view of the importance of preserving free speech and assembly for the good of all of us.

Respectfully submitted,

/s/ Sophia H. Hall
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IN THE SUPREME COURT OF ILLINOIS

No. 42895

CITY OF ROCKFORD, PLAINTIFF-APPELLEE

vs.

RICHARD GRAYNED, DEFENDANT-APPELLANT

AMENDMENT TO PETITION FOR REHEARING

In further support of his petition for rehearing in the above cause, defendant directs this Court's attention to the October 29, 1970 decision of the United States Court of Appeals for the Seventh Circuit in the case of *Mosley* vs. *Police Department of the City of Chicago, et al.* (See Exhibit A hereto attached). That case involved Chapter 193-1(i) of the Municipal Code of Chicago, which provides that:

> "A person commits disorderly conduct when he knowingly: . . . . (i) Pickets or demonstrates on a public way within 150 feet of any primary or secondary school building while the school is in session and one-half hour before the school is in session and one-half hour after the school session has been concluded, provided that the subsection does not prohibit the peaceful picketing of any school involved in a labor dispute; . . ."

As this Court can observe, the Chicago ordinance is in precisely the same language as Section 18.1(i) of the Rockford Code of Ordinances which was considered by this Court to be constitutional in its decision rendered September 29, 1970. The Seventh Circuit Court of Appeals, however, finds that

> ". . . Chapter 193-1(i) denies absolutely plaintiff's right to express his views by the mere carrying of a sign as he walks upon the public sidewalk adjoining the school during school hours, It is, therefore patently unconstitutional on its face."

Defendant believes that *Mosley* is controlling and in any event should be persuasive in this Court's consideration of the constitutionality of Section 18.1(i) and, therefore, reiterates his petition that this Court grant a rehearing of his appeal.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

No. 70-5106

RICHARD GRAYNED, APPELLANT

v.

CITY OF ROCKFORD

ON CONSIDERATION of the motion of the appellant for leave to proceed in forma pauperis,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

October 12, 1971

SUPREME COURT OF THE UNITED STATES

No. 70-5106

RICHARD GRAYNED, APPELLANT

v.

CITY OF ROCKFORD

APPEAL from the Supreme Court of the State of Illinois.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted. The case is consolidated with No. 70-87 and a total of one hour is allotted for oral argument.

October 12, 1971

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

POLICE DEPARTMENT OF THE CITY OF CHICAGO, *et al.*, *Petitioners*, v. EARL D. MOSLEY, *Respondent.*	No. 70-87 CERTIORARI TO THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT
	CONSOLIDATED
RICHARD GRAYNED, *Appellant*, v. CITY OF ROCKFORD, *Appellee.*	No. 70-5106 APPEAL FROM THE SUPREME COURT OF ILLINOIS

BRIEF FOR APPELLANT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

POLICE DEPARTMENT OF THE CITY OF CHICAGO, *et al.*, *Petitioners*, v. EARL D. MOSLEY, *Respondent.*	No. 70-87. CERTIORARI TO THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT
	CONSOLIDATED[1]
RICHARD GRAYNED, *Appellant*, v. CITY OF ROCKFORD, *Appellee.*	No. 70-5106 APPEAL FROM THE SUPREME COURT OF ILLINOIS

BRIEF FOR APPELLANT

OPINIONS

The opinion of the United States Court of Appeals, Seventh Circuit, in *Mosley v. Police Department of the City of Chicago, et al.*, is reported at 432 F.2d 1256 (1970).

[1] These cases were consolidated by this Court's order of October 12, 1971. Because the two courts below reached contrary conclusions and because there was no special order of this Court as to the briefing requirements, we have assumed that they are the same in each case as they would have been if there had been no consolidation.

The opinion of the Illinois Supreme Court in *City of Rockford v. Grayned*, is reported at 46 Ill. 2d 486, 263 N.E.2d 866 (1970) (A. 22)..

JURISDICTION OF THIS COURT

Richard Grayned was convicted on October 7, 1969, in the Circuit Court of Winnebago County, Illinois, of having violated two ordinances of the City of Rockford on April 25, 1969. In accordance with then applicable rules of the Supreme Court of Illinois, he appealed that conviction directly to that court, charging that those ordinances were repugnant to the Constitution and laws of the United States and urging that his conviction be reversed. On or about September 29, 1970, the Illinois Supreme Court upheld the validity of the ordinances and affirmed Grayned's conviction (A. 27). His petition for rehearing addressed to that court was denied on or about December 3, 1970. (R. Item 10).

On the application of appellant, Mr. Justice Marshall of this Court extended the time within which to docket this appeal to April 12, 1971. On or about April 8, 1971, appellant filed a jurisdictional statement invoking the jurisdiction of this Court conferred by 28 U.S.C. § 1257(2), relying upon this Court's construction of that statutory provision in *Staub v. City of Baxley*, 355 U.S. 313, 78 S. Ct. 277 (1958), and *Terminiello v. City of Chicago*, 337 U.S. 1, 69 S. Ct. 894 (1949). This Court noted probable jurisdiction on October 12, 1971. On the same day a writ of certiorari was issued in the *Mosley* case.

CONSTITUTIONAL PROVISIONS, STATUTES AND ORDINANCES INVOLVED

A. Constitution of the United States, Amendment I:

> "Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

B. **Constitution of the United States, Amendment XIV:**

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

C. **Ill. Rev. Stats.** (1969), Ch. 24, § 1-2-1. *"Ordinances and rules to execute powers—Limitations on punishments.*

"The corporate authorities of each municipality may pass all ordinances and make all rules and regulations proper or necessary, to carry into effect the powers granted to municipalities, with such fines or penalties as may be deemed proper. No fine or penalty, however, except civil penalties provided for failure to make returns or to pay any taxes levied by the municipality shall exceed $500 and no imprisonment authorized in Section 1-2-9 for failure to pay any fine, penalty or cost shall exceed 6 months for one offense."

D. **Code of Ordinances of the City of Rockford, Illinois:**

1. Section 18.1:[2]

"A person commits disorderly conduct when he knowingly:

* * * * *

"(i) Pickets or demonstrates on a public way within 150-feet of any primary or secondary school

[2]As a result of a recent recodification of Rockford ordinances (November 30, 1970, effective December 8, 1970) these provisions which will usually be referred to hereinafter as the "Anti-picketing or demonstration ordinance" are now § 19-13(i) and (j), but § 18.1(k) was repealed. § 19.2(a), *infra*, which will usually be referred to hereinafter as the "Anti-noise or diversion ordinance," is now §§ 19-15 and 19-16. Section 1-8 *infra*, was revised to provide for fines of from five ($5) to five hundred ($500) dollars only. Section 1-9 infra is the same as it has been since its adoption in 1936.

building while the school is in session and one-half hour before the school is in session and one-half hour after the school session[3] has been concluded, provided that this subsection does not prohibit the peaceful picketing of any school involved in a labor dispute; or

"(j) Pickets or demonstrates on a public way within 150 feet of any church, temple, synagogue or other place of worship while services are being conducted and one-half hour before services are to be conducted and one-half hour after services have been concluded, provided that this subsection does not prohibit the peaceful picketing of any church, temple, synagogue or other place of worship involved in a labor dispute.

"(k) A person convicted of disorderly conduct shall be fined not less than $5.00 nor more than $500.00 for each offense . . ."

2. Section 19.2(a). Schools.

"That no person not a student or employee of any school located in the City of Rockford, or parent or guardian of any student enrolled therein, shall remain within any school during normal school hours without securing the written permission of the principal or person in charge of said school.

"The term 'student' as used herein is hereby defined as any person of school age and enrolled in the school at which he or she then is present.

"That no person, while on public or private grounds adjacent to any building in which a school or any class thereof is in session, shall willfully make or assist in the making of any noise or diversion which disturbs or tends to disturb the peace or good order of such school session or class thereof. And when school premises are used for any gathering or

[3]The ordinance of the City of Chicago involved in *Police Department, etc., et al. v. Mosley*, supra, consolidated herewith, is the same except that this word "session" is omitted at this point from the Chicago ordinance.

function during the day or nighttime, no person will willfully assist in the making of any noise or diversion which disturbs or tends to disturb the peace, quiet or good order of such gathering or function."

3. Section 1-8. General Penalty; continuing violations; adjudging fines and imprisonments.

"It shall be unlawful for any person to violate or fail to comply with any provision of this Code and where no specific penalty is provided therefor, the violator shall be punished by a fine of not less than ten dollars and not exceeding two hundred dollars or imprisonment for a term not exceeding six months or by both such fine or imprisonment, however, except civil penalties provided for failure to make returns or to pay any taxes levied by the municipality shall exceed two hundred dollars and no imprisonment shall exceed six months for one offense."

4. Section 1-9. Imprisonment.

"Any person upon whom any fine or penalty shall be imposed for the violation of any laws or ordinances of the city may, upon the order of the court before whom the conviction is had, be committed to the city jail or such other place as may be hereafter provided for the incarceration of such offenders until such fine, penalty and costs shall be fully paid; provided that no such imprisonment shall exceed six months for any one offense."

QUESTION PRESENTED FOR REVIEW

Do the Rockford ordinances, and his conviction for violation of them, deprive appellant, and threaten to deprive others similarly situated, of rights of freedom of speech, freedom of assembly, due process, and equal protection of the laws all in violation of the Fourteenth Amendment to the Constitution of the United States?

STATEMENT OF THE CASE

The appellant, Richard Grayned, a Negro, was arrested along with approximately forty (40) other males of about

two hundred (200) persons, both black and white, male and female, who were participating in a noon-time demonstration in front of Rockford's West High School. The demonstrators, walking peacefully on the public sidewalk within one hundred and fifty (150) feet of the school carrying signs, sought addition of courses in Negro history; hiring of more Negro teachers; use of black student cheer leaders; and protested discriminatory treatment of black students and lack of representation of black students in school organizations, all at that school. The demonstrators included students, former students, parents of students and other concerned citizens. Grayned, himself, was not a student at the time of his arrest.

Originally Grayned was charged with violating the "Anti-noise or diversion ordinance." It had been adopted less than a month prior to this demonstration after public controversy had developed concerning the alleged discrimination against Negro students in West High School. Later, the complaint against the appellant was amended to add a charge of violating the "Anti-picketing and demonstration ordinance" which had been adopted in 1956. (A. 1-3).

Counsel for Grayned moved to quash the complaint as amended on the ground that these ordinances denied defendant rights protected by the Fourteenth Amendment. In addition, counsel charged that the ordinance authorizing imprisonment for violation of the newly adopted "Anti-noise and diversion ordinance" was void because it exceeded the authority of the municipality. The motion to quash was denied. On a trial before a jury, the judge instructed the jury as to the offenses charged in the exact language of the ordinances. Upon the return of a verdict of guilty on both charges, counsel for Grayned moved to set aside the verdict on the grounds that the evidence did not sustain the verdict and that the ordinances and the conviction denied rights to Grayned protected by the Fourteenth Amendment, particularly freedom of speech, freedom of assembly, due process of law, and equal protection of the laws. The post-trial

motions were denied and Grayned was fined $25.00 on each charge. (A. 4-19).

On direct appeal to the Illinois Supreme Court in accordance with its rules then applicable, the federal constitutional issues were again raised. In addition, counsel for Grayned again charged that §1.8 of the Rockford ordinances, supra, in authorizing imprisonment for a violation of the "Anti-noise or diversion ordinance" exceeded the statutory authority of the City of Rockford.

The Supreme Court of Illinois, one justice dissenting, affirmed the conviction of Grayned and sustained the validity of the Rockford ordinances involved except that the Illinois Supreme Court ruled that the penal provision of §1.8 was beyond the power of the City of Rockford in providing for imprisonment. The court was of the view, however, that the penal ordinance was "severable" and sustained the imposition of a fine on Grayned. (A. 22).

Contemporaneously with the attack by Grayned on the Rockford ordinances, an effort was being made in the United States District Court for the Northern District of Illinois to restrain enforcement of the Chicago "Anti-picketing and demonstration ordinance" which, except for one immaterial word, is exactly the same as the Rockford "Anti-picketing and demonstration ordinance." (See p. 4, supra). A few days after the announcement by the Illinois Supreme Court of its decision affirming Grayned's conviction, the Court of Appeals for the Seventh Circuit ruled in *Mosley v. Police Department of the City of Chicago*, supra, that enforcement of the Chicago "Anti-picketing and demonstration ordinance" should be enjoined because it threatened Mosley with denial of freedom of speech protected by the Fourteenth Amendment. That court was of the view that the City of Chicago ordinance was "overbroad" and that Mosley's right to picket in the public way could not be denied "where there is no danger of interference with a valid state interest."

The decision in *Mosley* was called to the attention of the Supreme Court of Illinois by petition for rehearing. In deny-

ing that petition that court made no comment concerning the ruling of the Court of Appeals in *Mosley*. (A. 22-29).

SUMMARY OF ARGUMENT

A. The Rockford "Anti-picketing and demonstration ordinance" and the "Anti-noise or diversion ordinance" are invalid because they punish efforts to exercise the right to speak, peaceably to assemble, and peaceably to petition the government for redress or grievances, all being rights protected against state interference by the Fourteenth Amendment to the Constitution of the United States.

B. These Rockford ordinances are invalid because they are unconstitutionally vague in that they do not define the meaning of the terms "pickets or demonstrates"; and the test of whether "noise or diversion . . . disturbs or tends to disturb the peace or good order" of a school is based on the sensitivity of some unidentified person or persons.

C. The "Anti-picketing and demonstration ordinance" violates the Equal Protection clause of the Fourteenth Amendment because it permits peaceful picketing of a school only when it is involved in a labor dispute and that classification does not serve any compelling governmental interest.

For all of the foregoing reasons, appellant's conviction deprives him of rights protected by the Constitution of the United States and the conviction should be set aside.

ARGUMENT

A. THESE ROCKFORD ORDINANCES ARE INVALID BECAUSE THEY PUNISH EFFORTS TO EXERCISE THE RIGHT TO SPEAK, TO ASSEMBLE, AND TO PEACEABLY PETITION THE GOVERNMENT FOR REDRESS OF GRIEVANCES ALL BEING RIGHTS PROTECTED AGAINST STATE INTERFERENCE BY THE FOURTEENTH AMENDMENT.

The first charge against appellant was that in violation of the "Anti-noise or diversion ordinance":

> "While on school ground and while school was in session, (appellant) did wilfully make and assist in the making of a diversion which tended to disturb the peace in (sic) good order of the school session and class thereof." (A. 1).

The second charge was that in violation of the "Anti-picketing and demonstration ordinance" appellant:

> "Picketed or demonstrated on a public way within one hundred fifty (150) feet of a secondary school building while the school was in session and that said subject was not picketing with regards to any labor dispute." (A. 2).

Appellant pleaded not guilty to both charges.

The circumstances of the conduct complained of by the City of Rockford are clear. The appellant, Richard Grayned, a Negro, was arrested along with approximately forty (40) other males of about two hundred (200) persons, both black and white, male and female, who were participating in a noon-time demonstration in front of Rockford's West High School. The demonstrators, walking peacefully on the public sidewalk within one hundred and fifty (150) feet of the school, carrying signs, sought addition of courses in Negro history to the school's curriculum; hiring of more Negro teachers at the school; use of black student cheer leaders; and protested discriminatory treatment of black students in school organizations, all at that school. The demonstra-

tors included students, former students, parents of students and other concerned citizens.

The Supreme Court of Illinois pithily summarized the facts by observing that:

> "On April 25, 1969, a demonstration was held in front of a high school in the City of Rockford. Richard Grayned, the defendant here, and 40 other demonstrators were arrested." (46 Ill.2d 492, 493, 263 N.E.2d 866, 867.)[4]

In affirming the conviction of appellant the Supreme Court of Illinois obviously construed the ordinances in question as prohibiting appellant and others from peacefully exercising "methods of expression entitled to First Amendment protection," *Shuttlesworth v. City of Birmingham, Ala.*, 394 U.S. 147, 152, 89 S.Ct. 935, 939 (1969). Nevertheless the Illinois court ruled that these ordinances were valid because, they said:

> "It cannot be doubted that the State has a legitimate interest in preserving the peace and good order of its school system . . .
>
> Our conclusion here is that the ordinance in question on its face is a valid law dealing with conduct subject to regulation so as to vindicate important interests of society and that the fact that free speech is intermingled with such conduct does not bring

[4]There has been no substantial conflict as to the facts in this case. The record before this Court, however, does not include a verbatim transcript of the proceedings at the trial though they were recorded by a court reporter. In perfecting the appeal to the Illinois Supreme Court counsel for appellant did not order the notes transcribed because of appellant's lack of funds. Prosecution for violation of municipal ordinances in Illinois is deemed to be "quasi-criminal" in nature so that the procedure followed is generally that followed in civil cases, not that followed in criminal cases. See *Village of Park Forest v. Bragg*, 38 Ill. 2d 225, 230 N.E.2d 868 (1967); and *Village of Maywood v. Houston*, 10 Ill. 2d 117, 139 N.E.2d 233 (1957). Thus there is no provision under the Illinois practice for furnishing a transcript of the proceedings at a trial for violation of a municipal ordinance to an indigent defendant at the expense of the state. Cf.

with it constitutional protection.' (Cf. *Cox v. Louisiana*, 379 U. S. 559, 564, 85 S.Ct. 476, 481, 13 L.Ed.2d 487, 492)." (46 Ill.2d 492, 494, 263 N.E.2d 866, 867-868.)

In so ruling, the Illinois Supreme Court, we respectfully submit, misapprehended the state of the law and the applicable authorities because this Court has never condoned indiscriminate prohibition of the exercise of Fourteenth Amendment rights no matter what state interest was claimed.

In the *Cox* case relied on to sustain these Rockford ordinances, for clarity hereinafter usually referred to as the second *Cox* case, this Court emphatically approved a state statute punishing picketing in or near a building housing a courthouse,

> * * * "with the intent of interfering with, obstructing or impeding the administration of justice, or with the intent of influencing any judge, juror, witness or court officer in the exercise of his duty . . . ." LSA Rev. Stat. §14:401 (Cum. Supp. 1962).

In its opinion the determinative features of that case which distinguish it from the instant case were pointed out when this Court said:

> "There can be no question that a State has a legitimate interest in protecting its judicial system from

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Griffin v. People of State of Illinois, 351 U.S. 12, 76 S. Ct. 585 (1956), and *Boddie v. Connecticut*, 401 U.S. 371, 91 S. Ct. 780 (1971). On motion of appellant the Supreme Court of Illinois waived its requirement that excerpts of the record or an abstract be filed because counsel for appellant believed that the relevant portions of the record could adequately be set forth in appellant's brief in the Illinois Supreme Court and so represented to that court. That court apparently did not regard a trial transcript as necessary for decision of the federal constitutional issues raised. Cf. *Coates v. City of Cincinnati*, 402 U.S. 611, 616, 91 S.Ct. 1686, 1689 (1971).

This Court has permitted appellant to proceed *in forma pauperis*, but it is not clear that federal funds are available to pay for a transcript of the proceedings of the trial. See Rule 53(6) of the Rules of this Court.

the pressures which picketing near a courthouse might create. Since we are committed to a government of laws and not of men, it is of the utmost importance that the administration of justice be absolutely fair and orderly. This Court has recognized that the unhindered and untrammeled functioning of our courts is part of the very foundation of our constitutional democracy. See Wood v. Georgia, 370 U.S. 375, 383, 82 S.Ct. 1364, 1369, 8 L.Ed.2d 569. The constitutional safeguards relating to the integrity of the criminal process attend every stage of a criminal proceeding, starting with arrest and culminating with a trial 'in a courtroom presided over by a judge.' Rideau v. Louisiana, 373 U.S. 723, 727, 83 S.Ct. 1417, 1419, 10 L.Ed.2d 663. There can be no doubt that they embrace the fundamental conception of a fair trial, and that they exclude influence or domination by either a hostile or friendly mob. There is no room at any stage of judicial proceedings for such intervention; mob law is the very antithesis of due process. See Frank v. Mangum, 237 U.S. 309, 347, 35 S.Ct. 582, 595; 59 L.Ed. 969. (Holmes, J., dissenting). *A State may adopt safeguards necessary and appropriate to assure that the administration of justice at all stages is free from outside control and influence. A narrowly drawn statute such as the one under review is obviously a safeguard both necessary and appropriate to vindicate the state's interest in assuring justice under law.*" (379 U.S. 559, 562-563, 85 S.Ct. 476, 479-480 (1964). (Emphasis supplied).

In basing its decision on that second *Cox* opinion the Illinois Supreme Court apparently failed to notice that even there, though this Court was of the opinion that the *statute* was valid because it was "narrowly drawn" to protect the "legitimate interest" of the State, the *conviction* of peaceful demonstrators for violating even that valid, narrow statute was not valid. This, apparently, because they were on the public sidewalk between 101 and 125 feet from the courthouse where the sheriff had said they might conduct their demonstration.

The second *Cox* opinion contains no warrant for the gross invasion of individual rights involved in the instant case. In that *Cox* case this Court upheld a narrowly drawn statute specifically aimed at protecting judges, jurors, witnesses and court officer from intentional and deliberate intimidation. No serious argument has been offered to justify constitutional protection for such conduct. In contrast, these broad Rockford ordinances punish exercise of First Amendment rights without regard to the intention of the citizen who, in this case, sought no more than peacefully to voice his grievances and those of his fellow citizens.

The nature of the state interest these ordinances claim to protect warrants no such invasion of constitutional rights. The Illinois Supreme Court characterized that interest as "preserving the peace and good order of its school system," supra, at page 10. Even that laudable purpose, however, will not validate ordinances so broad that they punish the use of the streets and public places for peaceful communication of views.

This Court has ruled that prohibition by school officials of symbolic conduct which was an expression of students' opinion in the school itself, including classrooms, was unconstitutional. *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 514, 89 S.Ct. 733, 740 (1969). There this Court held that in absence of the demonstration of any facts which might reasonably have led school authorities to forecast substantial disruption of, or material interference with, school activities, or any showing that disturbances or disorders on school premises in fact occurred when students wore black arm bands on their sleeves to exhibit their disapproval of Vietnam hostilities, a regulation prohibiting wearing such arm bands at school and providing for suspension of any student refusing to remove such an arm band, was an unconstitutional interference with the students' Fourteenth Amendment rights of expression of opinion.

It would appear to be impossible, then, in light of the *Tinker* case to justify ordinances so broad they punish peaceful expression of views *outside* the school when such expres-

sion *inside* the school falls within the protected orbit of freedom of communication of ideas. Significantly, the *Tinker* case, supra, is not an isolated, single decision. To the same effect in limiting the power of the state to interfere with Fourteenth Amendment rights in the conduct of public schools, see *Keyishian v. Board of Regents of U. of St. of N.Y.*, 385 U.S. 589, 87 S. Ct. 675 (1967); and *Shelton v. Tucker*, 364 U.S. 479, 81 S. Ct. 247 (1960).

In relying for a basis for its decision solely on the second *Cox* case the Illinois Supreme Court ignored the other *Cox* opinion rendered by this Court on the same day, *Cox v. Louisiana*, 379 U.S. 536, 85 S. Ct. 453 (1965), hereinafter usually referred to as the first *Cox* case. In that decision this Court struck down as violating rights of free speech and free assembly broad Louisiana statutes, like the ordinances here, prohibiting "disturbing the peace," and "obstructing public passages," when they were construed as prohibiting peaceful demonstrations protesting racial segregation and discrimination at the state capitol and near the courthouse.

Unfortunately, the Illinois Supreme Court also ignored an unbroken line of decisions by this Court over more than thirty years that these First Amendment rights, protected from interference by the states by the Fourteenth Amendment, may not be abridged or denied under the guise of regulation for the general good. Indeed, the soundness of the views first expressed by Mr. Justice Roberts in *Hague v. C.I.O.*, 307 U.S. 496, 515-516, 59 S. Ct. 954, 964 (1939), has never been questioned. There he said:

> "Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens. The privilege of a citizen of the United States to use the streets and parks for communication of views

> on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience and in consonance with peace and good order; *but it must not, in the guise of regulation, be abridged or denied.*" (Emphasis supplied)

For the convenience of Court and counsel, instead of reviewing all of the decisions in this brief, the attention of the Court is respectfully directed to the detailed account and the incisive, in-depth analysis of the opinions of this Court on this subject from *Hague*, supra, to *Cox*, supra, in Kalven, *"The Concept of the Public Forum: Cox v. Louisiana,"* The Supreme Court Review, 1965, p. 1.

Most significantly, in those cases not even a single justice of this Court ever approved any such municipal denial of freedom of speech, assembly and petition for redress of grievances as is the result of the conviction in the instant case. See *Amalgamated Food Employees Union Local 590, et al., v. Logan Valley Plaza, Inc., et al.*, 391 U.S. 308, 313-314, 88 S.Ct. 1601, 1605-1606 (1968).

In *Shuttlesworth v. City of Birmingham*, supra, 394 U.S. at 152, 89 S.Ct. at 939, in a context similar to that of the instant case, Mr. Justice Stewart for a majority of the Court recently quoted those views of Mr. Justice Roberts' with approval, prefacing the quotation with the observation that:

> "It is argued, however, that what was involved here was not 'pure speech,' but the use of public streets and sidewalks, over which a municipality must rightfully exercise a great deal of control in the interest of traffic regulation and public safety. That, of course, is true. We have emphasized before this that 'the First and Fourteenth Amendments (do not) afford the same kind of freedom to those who would communicate ideas by conduct such as patrolling, marching, and picketing on streets and highways, as these amendments afford to those who communicate ideas by pure speech.' *Cox v. Louisiana*, 379 U.S. 536, 555, 85 S. Ct. 453, 464, 13 L. Ed.2d

471. 'Governmental authorities have the duty and responsibility to keep their streets open and available for movement.' Id., at 554-555; 85 S.Ct., at 464.

But our decisions have also made clear that picketing and parading may nonetheless constitute methods of expression, entitled to First Amendment protection. *Cox v. Louisiana*, supra; *Edwards v. South Carolina*, 372 U.S. 229, 83 S. Ct. 680, 9 L. Ed.2d 697; *Thornhill v. Alabama*, 310 U.S. 88, 60 S. Ct. 736, 84 L. Ed. 1093."

In the *Shuttlesworth* case this Court observed:

"There can be no doubt that the Birmingham ordinance, as it was written, conferred upon the City Commission virtually unbridled and absolute power to prohibit any 'parade,' 'procession,' or 'demonstration' on the city's streets or public ways." (394 U.S. at 150, 89 S. Ct. at 938).

The Birmingham ordinance held invalid in *Shuttlesworth* was a "licensing" ordinance so that theoretically, a "license" could have been given to permit some use of the public way for some exercise of freedoms of speech, demonstration, and assembly. The Rockford ordinances thus are substantially worse than the Birmingham ordinance held to be invalid, because the Rockford ordinance makes no provision for "license" or "permit," and only the whim or caprice of police officers in not arresting and charging persons picketing or demonstrating would allow use of Rockford streets for purposes historically protected by the Constitution and Court of the United States.

What the City of Rockford has done, and what the Supreme Court of Illinois has approved, is to convict appellant of a crime, and to fine him, for using the public way for protesting racial discrimination in the very school outside which he and his associates conducted their peaceful demonstration. This Court has never approved any such broadside state interference with the exercise of First Amendment rights. On the contrary this Court has assiduously protected such rights. See *Nietmotko v. Maryland*, 340 U.S.

268, 71 S. Ct. 325 (1951); *Garner v. Louisiana*, 368 U.S. 157, 82 S. Ct. 248 (1961)*[5]; *Edwards v. South Carolina*, 372 U.S. 229, 83 S. Ct. 680 (1963)*; *Fields v. South Carolina*, 375 U.S. 44, 84 S. Ct. 149 (1963)*; *Henry v. City of Rock Hill*, 376 U.S. 776, 84 S. Ct. 1042 (1964)*; *Brown v. Louisiana*, 383 U.S. 131, 86 S. Ct. 719 (1966)*; *Cox v. Louisiana*, 379 U.S. 536, 85 S. Ct. 453 (1965)*; *Cox v. Louisiana*, 379 U.S. 559, 85 S. Ct. 476 (1965)*; *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 89 S. Ct. 935 (1969)*; *Gregory v. City of Chicago*, 394 U.S. 111, 89 S. Ct. 946 (1969)*; *Organization For a Better Austin v. Keefe*, 402 U.S. 415, 91 S. Ct. 1575 (1971)*; *Coates v. City of Cincinnatti*, 402 U.S. 611, 91 S. Ct. 1686 (1971); *Cohen v. California*, 403 U.S. 15, 91 S.Ct. 1780 (1971).

Appellant charges that the Rockford ordinances are void for "overbreadth." This Court said of a similar attack in *Zwickler v. Koota*, 389 U.S. 241, 250, 88 S.Ct. 391, 396 (1967), the following:

> "(Appellant's) constitutional attack is that the statute . . . is void for 'overbreadth,' that is, that it offends the constitutional principle that 'a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.' *NAACP v. Alabama ex rel. Flowers*, 377 U.S. 288, 307, 84 S. Ct. 1302, 1314, 12 L. Ed.2d 325. See *Aptheker v. Secretary of State*, 378 U.S. 500, 508-509; 84 S. Ct. 1659, 1665, 12 L. Ed.2d 992; *NAACP v. Button*, 371 U.S. 415, 438, 83 S. Ct. 328, 340, 9 L. Ed.2d 405; *Louisiana ex rel. Gremillion v. NAACP*, 366 U.S. 293, 81 S. Ct. 1333, 6 L. Ed.2d 301; *Shelton v. Tucker*, 364 U.S. 479, 488, 81 S. Ct. 247, 252, 5

[5]In cases so marked this Court specifically ruled that the right to use public streets and sidewalks to protest racial discrimination and segregation was protected against state interference by the Fourteenth Amendment. See also *Davis v. Francois*, 395 F.2d 730 (C.A. 5th, 1968).

L. Ed.2d 231; *Schware v. Board of Bar Examiners*, 353 U.S. 232, 246, 77 S. Ct. 752, 760, 1 L. Ed.2d 796; *Martin v. City of Struthers*, 319 U.S. 141, 146-149, 63 S. Ct. 862, 864-866, 87 L. Ed. 1313; *Cantwell v. State of Connecticut*, 310 U.S. 296, 304-307, 60 S.Ct. 900, 904, 84 L.Ed. 1213; *Schneider v. State of New Jersey*, 308 U.S. 147, 161, 165, 60 S.Ct. 146, 152, 84 L.Ed. 155."

Later decisions of this Court are to the same effect. See *United States v. Robel*, 389 U.S. 258, 265-266, 88 S. Ct. 419, 424 (1967); *Shuttlesworth v. City of Birmingham*, supra, 394 U.S. at 153, 89 S. Ct. at 940; *Coates v. City of Cincinnati*, supra, 402 U.S. at 614, 91 S.Ct. at 1688.

In the instant case under the guise of regulation, Rockford (and Chicago) punish efforts to exercise First Amendment rights. The subjects of the ordinances, i.e., regulation of the use of public streets and sidewalks, and regulation of noise and diversion near public schools appear to be within the ambit of the legislative authority of the municipality. At the same time, however, as in the instant cases, these ordinances by their terms authorize punishment of persons who have done (Grayned), or would do (Mosley), no more than peacefully exercise their rights of freedom of speech, freedom of assembly and petition for redress of their grievances. Thus, these ordinances, in fact, make criminals of those who seek to exercise their First Amendment rights.

It is immaterial whether, in terms of the familiar analysis, see *Shuttlesworth*, supra, p. 15-16, the conduct of appellant is deemed to be "speech pure," "speech plus," or even conduct not involving speech, as farfetched as that would be. Cf. *United States v. O'Brien*, 391 U.S. 367, 376, 88 S. Ct. 1673, 1678 (1968); and *Cowgill v. California*, 396 U.S. 371, 371-373, 90 S. Ct. 613, 614-615 (1970). Both by their terms and as construed by the Illinois Supreme Court, the Rockford ordinances deliberately punish peaceful exercise of First Amendment rights and neither the city nor the Supreme Court of Illinois has demonstrated that any lawful public purpose is, or can be, served by this denial of constitu-

tional rights. As this Court pointed out in the *Amalgamated* case, supra, 391 U.S. at 313-314, 88 S. Ct. at 1606:

> "To be sure, this Court has noted that picketing involves elements of both speech and conduct, i.e., patrolling, and has indicated that because of this intermingling of protected and unprotected elements, picketing can be subjected to controls that would not be constitutionally permissible in the case of pure speech. (Citing cases) Nevertheless, no case decided by this Court can be found to support the proposition that the nonspeech aspects of peaceful picketing are so great as to render the provisions of the First Amendment inapplicable to it altogether."

Poverty and lack of control of radio and television stations, newspapers, and even easy access to printed handbills, make the use of public streets and sidewalks for voicing religious, political, and social views of the utmost importance to many of our citizens. See e.g., *Thornhill v. Alabama*, 310 U.S. 88, 60 S. Ct. 736 (1940); *Martin v. Struthers*, 319 U.S. 141, 146, 63 S. Ct. 862, 865 (1943); *Marsh v. Alabama*, 326 U.S. 501, 66 S.Ct. 276 (1946) and *Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza, Inc.*, supra. The City of Rockford would deny this means of communication to appellant and all other persons similarly situated. The Supreme Court of Illinois has condoned this gross denial of rights protected by the Fourteenth Amendment of the Constitution of the United States. Accordingly, we respectfully urge this Court to reverse the decision of the lower court, to rule that these Rockford ordinances are unconstitutional, and to set aside the conviction of appellant.

B. THESE ROCKFORD ORDINANCES ARE INVALID BECAUSE THEY ARE UNCONSTITUTIONALLY VAGUE

The provisions of the Rockford ordinances which demonstrate that they violate due process requirements of certainty are:

> 1. "A person commits disorderly conduct when he knowingly. . . *pickets or demonstrates* on a public way within 150 feet of any . . school building while the school is in session. . ."
>
> and
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> 2. "That no person, while on public or private grounds adjacent to any building in which a school or any class thereof is in session, shall willfully make or assist in the making of *any noise or diversion which disturbs or tends to disturb the peace or good order of such school session or class thereof*. . ." (Emphasis supplied.)

As this Court observed of the Alabama statute involved in *Thornhill v. Alabama*, supra, 310 U.S. at 100-101, 60 S. Ct. at 743-744:

> "The vague contours of the term 'picket' are nowhere delineated.[6] Employees or others, accord-

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[6]See Hellerstein, Picketing Legislation and the Courts (1931), 10 No. Car. L. Rev. 158, 186n.:

> "A picketer may: (1) Merely observe workers or customers. (2) Communicate information, e.g., that a strike is in progress, making either true, untrue or libelous statements. (3) Persuade employees or customers not to engage in relations with the employer: (a) through the use of banners, without speaking, carrying true, untrue or libelous legends; (b) by speaking, (i) in a calm, dispassionate manner, (ii) in a heated, hostile manner, (iii) using abusive epithets and profanity, (iv) yelling loudly, (v) by persisting in making arguments when employees or customers refuse to listen; (c) by offering money or similar inducements to strike breakers. (4) Threaten employees or customers: (a) by the mere presence of the picketer; the presence may be a threat of, (i) physical violence, (ii) social ostracism, being branded in the community as a 'scab,' (iii) a trade or employees' boycott,

> ingly, may be found to be within the purview of the term and convicted for engaging in activities identical with those proscribed by the first offense. In sum, whatever the means used to publicize the facts of a labor dispute, whether by printed sign, by pamphlet, by word of mouth or otherwise, all such activity without exception is within the inclusive prohibition of the statute so long as it occurs in the vicinity of the scene of the dispute."

Though later decisions have discussed picketing and demonstrations, see e.g., *Cox v. Louisiana*, supra, (both cases), neither in judicial opinions nor otherwise have these terms been defined. In fact, one of the difficulties with the Rockford ordiance is that it was construed by both the trial court and the Illinois Supreme Court as including "peaceful" picketing, thus punishing exercise of First Amendment rights, as we have demonstrated hereinbefore. Under these circumstances, we respectfully submit that ordinance does not meet the requirements of the due process clause as to certainty. See *Lanzetta v. New Jersey*, 306 U.S. 451, 59 S. Ct. 618 (1939); *United States v. L. Cohen Grocery Co.* 255 U.S. 81, 41 S. Ct. 298 (1921); and *Cohen v. California*, supra, 403 U.S. at ___, 91 S. Ct. at 1785.

The second ordinance likewise fails to satisfy due process requirements. The vice of the "Anti-noise or diversion ordinance" is that its standard is wholly subjective, i.e., depends upon the judgment of some unidentified person or persons that "any noise or diversion . . . disturbs or tends to dis-

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i.e., preventing workers from securing employment and refusing to trade with customers, (iv) threatening injury to property; (b) by verbal threats. (5) Assaults and use of violence. (6) Destruction of property. (7) Blocking of entrances and interference with traffic.

'The picketer may engage in a combination of any of the types of conduct enumerated above. The picketing may be carried on singly or in groups; it may be directed to employees alone or to customers alone or to both. It may involve persons who have contracts with the employer or those who have not or both.'"

turb the peace or good order of such school or class thereof."

Only last term this Court reaffirmed its position that conviction of a statute or ordinance whose standards depended upon the "sensitivity" of unidentified persons did not satisfy the requirements of due process. In *Coates v. Cincinnati*, 402 U.S. 611, 613-614, 91 S.Ct. 1686, 1688, this Court pointed out:

> "Beyond this, the only construction put upon the ordinance by the state court was its unexplained conclusion that 'the standard of conduct which it specifies is not dependent upon each complainant's sensitivity.' Ibid. But the court did not indicate upon whose sensitivity a violation does depend—the sensitivity of the judge or jury, the sensitivity of the arresting officer, or the sensitivity of a hypothetical reasonable man.[3]
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> (1) We are thus relegated, at best, to the words of the ordinance itself. If three or more people meet together on a sidewalk or street corner, they must conduct themselves so as not to annoy any police

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[3]Cf. Chaplinsky v. New Hampshire, 315 U.S. 568, 62 S.Ct. 766, 86 L.Ed. 1031, where this Court upheld a statute which punished 'offensive, derisive or annoying' words. The state courts had construed the statute as applying only to such words 'as have a direct tendency to cause acts of violence by the persons to whom, individually, the remark is addressed.' The state court also said: 'The word 'offensive' is not to be defined in terms of what a particular addressee thinks. * * * The test is what men of common intelligence would understand would be words likely to cause an average addressee to fight. * * * The English language has a number of words and expressions which by general consent are 'fighting words' when said without a disarming smile. * * * Such words, as ordinary men know, are likely to cause a fight. So are threatening, profane or obscene revilings. Derisive and annoying words can be taken as coming within the purview of the statute as heretofore interpreted only when they have this characteristic of plainly tending to excite the addressee to a breach of the peace.' This Court was 'unable to say that the limited scope of the statute as thus construed contravenes the constitutional right of free expression.' 315 U.S., at 573, 62 S.Ct., at 770.

officer or other person who should happen to pass by. In our opinion this ordinance is unconstitutionally vague because it subjects the exercise of the right of assembly to an unascertainable standard, and unconstitutionally broad because it authorizes the punishment of constitutionally protected conduct.

Conduct that annoys some people does not annoy others. Thus the ordinance is vague not in the sense that it requires a person to conform his conduct to an imprecise but comprehensible normative standard, but rather in the sense that no standard of conduct is specified at all. As a result, 'men of common intelligence must necessarily guess at its meaning.' *Connally v. General Construction Co.*, 269 U.S. 385, 391, 46 S. Ct. 126, 127, 70 L. Ed. 322."

In the instant case the Illinois Supreme Court was no more helpful than was the Ohio Supreme Court in the *Coates* case. In fact, the Illinois court disposed of this question by reference to earlier decisions by that court, none of which considered this question.

In the *Cohen* case, supra, 403 U.S. at ___, 91 S. Ct. at 1785-1786, this Court further demonstrated the vagueness inherent in a statute dependent for meaning on the sensitivity of persons not plainly identified. If that view protected Cohen's speech it certainly must protect the less colorful speech of appellant.

Taken all together then, we respectfully submit that these ordinances are invalid because they are vague and indefinite and appellant's conviction for violation of them accordingly should be set aside.

C. THE ANTI-PICKETING AND DEMONSTRATION ORDINANCE VIOLATES THE EQUAL PROTECTION CLAUSE BECAUSE IT PERMITS PEACEFUL PICKETING OF A SCHOOL ONLY WHEN IT IS INVOLVED IN A LABOR DISPUTE

The "Anti-picketing and demonstration ordinance" provides in pertinent part:

> "A person commits disorderly conduct when he knowingly:
>
> * * * * *
>
> (i) Pickets or demonstrates on a public way within 150 feet of any primary or secondary school building while the school is in session . . . , *provided that this subsection does not prohibit a peaceful picketing of any school involved in a labor dispute;* . . ." (Emphasis supplied).

If that exception is read literally, it would permit "the peaceful picketing of any school involved in a labor dispute" no matter what the subject or purpose of the picketing was. So read, then, the conduct of appellant and his associates apparently would not have violated the ordinance if Rockford's West High School had been involved in a labor dispute. There is nothing to suggest that one who "pickets or demonstrates" near a school "involved in a labor dispute" any the less interferes with the "peace and good order" of the school than does one who "pickets or demonstrates" near a school not so involved in a labor dispute.

If the exception is read as permitting only "the peaceful picketing of any school involved in a labor dispute" with respect to that labor dispute, then the ordinance is a municipal determination of what "speech" will be permitted on the public way. For the reasons already discussed hereinbefore, any such municipal regulation would plainly violate the Fourteenth Amendment.

Actually, the permissive exception with respect to the school involved in the labor dispute casts grave doubts on whether the real purpose of the ordinance was, as the Illinois

Supreme Court believed, to preserve "the peace and good order of its school system." (See pg. 11 supra) This exception shows that the purpose of the city, apparently, was to prohibit picketing and demonstrations near schools unless the picketing and demonstration occurred in connection with a labor dispute.

No matter how construed and no matter what its purpose, the "anti-picketing and demonstration ordinance" violates the equal protection clause of the Fourteenth Amendment to the Constitution of the United States. That this is so was demonstrated by Mr. Justice Black in his concurring opinion in *Cox v. Louisiana*, supra, 379 U.S. at 580-581, 85 S. Ct. at 469-470, where he said:

> "The Louisiana law against obstructing the streets and sidewalks,[2] while applied here so as to convict Negroes for assembling and picketing on streets and sidewalks for the purpose of publicly protesting racial discrimination, expressly provides that the statute shall not bar picketing and assembly by labor unions protesting unfair treatment of union members. I believe that the First and Fourteenth Amendments require that if the streets of a town are open to some views, they must be open to all. It is worth noting in passing that the objectives of labor unions and of the group led by Cox here may have much in common. Both frequently protest discrimination against their members in the matter of

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[2] LSA-Rev. Stat. § 14:100.1 (Cum. Supp. 1962) provides in relevant part:

> 'No person shall wilfully obstruct the free, convenient and normal use of any public sidewalk, street, highway, bridge, alley, road, or other passageway, or the entrance, corridor or passage of any public building, structure, watercraft or ferry, by impeding, hindering, stifling, retarding or restraining traffic or passage thereon or therein.
>
> 'Providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more, favorable wage standards, hours of employment and working conditions. * * *'

employment. Compare *New Negro Alliance v. Sanitary Grocery Co.*, 303 U.S. 552, 561, 58 S. Ct. 703, 707, 82 L. Ed. 1012. This Louisiana law opens the streets for union assembly, picketing, and public advocacy, while denying that opportunity to groups protesting against racial discrimination. As I said above, I have no doubt about the general power of Louisiana to bar all picketing on its streets and highways. Standing, patrolling, or marching back and forth on streets is conduct, not speech, and as conduct can be regulated or prohibited. But by specifically permitting picketing for the publication of labor union views, Louisiana is attempting to pick and choose among the views it is willing to have discussed on its streets. It thus is trying to prescribe by law what matters of public interest people whom it allows to assemble on its streets may and may not discuss. This seems to me to be censorship in a most odious form, unconstitutional under the First and Fourteenth Amendments. And to deny this appellant and his group use of the streets because of their views against racial discrimination, while allowing other groups to use the streets to voice opinions on other subjects, also amounts, I think, to an invidious discrimination forbidden by the Equal Protection Clause of the Fourteenth Amendment."

These views of Mr. Justice Black were cited with approval in *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 670, 86 S. Ct. 1079, 1083 (1966), where this Court observed:

"We have long been mindful that where fundamental rights and liberties are asserted under the Equal Protection Clause, classifications which might invade or restrain them must be closely scrutinized and carefully confined. See, e.g., *Skinner v. State of Oklahoma*, 316 U.S. 535, 541, 62 S. Ct. 1110, 1113; *Reynolds v. Sims*, 377 U.S. 533, 561-562, 84 S. Ct. 1362, 1381; *Carrington v. Rash*, supra; *Baxstrom v. Herold*, 383 U.S. 107, 86 S. Ct. 760, 15 L.Ed.2d 620; *Cox v. State of Louisiana*, 379 U.S. 536, 580-581, 85 S. Ct. 453, 469, 13 L. Ed.2d 471 (Black, J., concurring)."

We respectfully submit that freedom of speech, freedom of assembly, and the right to petition the government for redress of grievances are "fundamental rights and liberties (here) asserted under the Equal Protection Clause." Closely scrutinized, the classification in this case, that is, picketing and demonstration generally, as contrasted with "peaceful picketing . . . in a labor dispute" has not been, and cannot be, "shown to be necessary to promote a *compelling* governmental interest . . .", *Shapiro v. Thompson*, 394 U.S. 618, 636, 89 S. Ct. 1322, 1331 (1969).

Accordingly, we respectfully submit that the anti-picketing and demonstration ordinance is invalid because it violates the Equal Protection Clause to the Fourteenth Amendment and appellant's conviction of violation of that ordinance should be set aside.

CONCLUSION

Violation of the Rockford "Anti-picketing and demonstration ordinance" and the "Anti-noise or diversion ordinance" is now punishable only by fine and appellant was only fined after his conviction of violating those ordinances. The City of Rockford attempted, illegally, to make violation of those ordinances punishable by fine or imprisonment or both. The City had no authority so to do, as the Illinois Supreme Court ruled. But under § 1.9 of the Rockford ordinances, supra, failure to pay a fine even if the failure is the result of the poverty of the defendant, could result in imprisonment. Any such imprisonment might itself be a violation of constitutional rights. See *Williams v. Illinois*, 399 U.S. 235, 90 S. Ct. 2018 (1970). In any event this combination of penal provisions applicable to these ordinances adds to the enormous "chilling effect" which these ordinances have and will continue to have on the efforts of persons of limited means to express their views with respect to political and social issues which vitally affect them unless this Court strikes down these ordinances as did the Court of Appeals for the Seventh Circuit in the *Mosely* case, supra.

Accordingly, we urge this Court to reverse the decision of the Supreme Court of Illinois and to rule that these Rockford ordinances are unconstitutional.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971.

Nos. 70-87, 70-5106, Consolidated

POLICE DEPARTMENT OF THE CITY OF CHICAGO, ET AL.,

Petitioners,

vs.

EARL D. MOSLEY,

Respondent.

RICHARD GRAYNED,

Appellant,

vs.

CITY OF ROCKFORD,

Appellee.

CERTIORARI TO THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT, APPEAL FROM THE SUPREME COURT OF ILLINOIS.

BRIEF FOR APPELLEE.

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CITY OF ROCKFORD,

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CERTIORARI TO THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT. APPEAL FROM THE SUPREME COURT OF ILLINOIS.

BRIEF FOR APPELLEE.

ADDITIONAL STATEMENT OF THE CASE.

Since the arrest of Appellant, the City Council of Rockford, Illinois, on November 15, 1971, amended Section 18.1 (i) (which under a recent recodification is now Chapter 19-13(i)) by deleting the provision "provided that this subsection does not prohibit the peaceful picketing of any

school involved in a labor dispute." This amendment and deletion has, of course, no effect on Appellant's personal situation. The amendment does have some bearing on the Fourteenth Amendment equal protection arguments advanced by Appellant. Guidance as to how to cope with disruption in and about schools would be extremely helpful to City Councils and local school boards.

The testimony of various witnesses was not ordered transcribed by the court reporter, nor was any effort made by Appellant to obtain an agreed statement of facts. Although the verdicts of the jury (Ap. 19-20) are included in the appendix, the intructions embodying the two ordinances are omitted. We presume that the jury was adequately and legally instructed.

The appendix does not include all of Chapter 28-19.2 (a), omitting the preamble thereof reading, "Be it ordained . . . that an ordinance been acted for the protection of schools . . ."

The absence of a written transcript of the testimony of the witnesses in the trial in the lower court, which lasted two whole days, (the Appendix indicates four, 18-20) makes it difficult to discuss the facts. Testimony that classes were being disturbed and disrupted by the picketing demonstrators is omitted. Testimony that the demonstrators were free to march on the sidewalk on the far side of N. Rockton Avenue (160 feet from the school building in question) and were so advised is likewise omitted. The statement that *only* Grayned (Ap. 7) was charged for violation of both ordinances is simply erroneous. Other captioned defendants were charged and prosecuted for violations of both ordinances.

In this case, it is admitted that there is a violation of both ordinances, and no complaint was made that the trial procedure, jury verdict or judgment is improper.

ARGUMENT.

I.

THE ROCKFORD ORDINANCES ARE NOT CONTRARY TO THE FIRST AMENDMENT, FREEDOM OF SPEECH AND ASSEMBLY, AND ARE NOT CONTRARY TO THE FOURTEENTH AMENDMENT.

A. Ordinances for the purpose of protecting and promoting efficient and orderly education are valid, although they may restrict freedom of speech and assembly.

This section of Appellee's brief is in answer to Appellant's arguments (A), complaining of the Rockford ordinances "because they punish efforts to exercise the right to speak, to assemble, and to peaceably petition the Government for redress of grievances all being rights protected against state interference by the Fourteenth Amendment." (Br. 9) Although this reference to the Fourteenth Amendment is repeated in Appellant's Summary Of Argument (A) and elsewhere, the main thrust of this section of Appellant's brief actually concerns the First Amendment, rights of free speech and assembly.

The right to freedom of speech and assembly is not absolute and is subject to reasonable regulations in certain areas. One such area is public education—in and around school grounds and buildings.

The Rockford ordinance (Section 19.2) specifically provides that it is an ordinance enacted for the protection of schools. The ordinance enacted for the protection of schools: The ordinance had no other purpose. The ordinances represented no attempt to restrict or regulate either speech or assembly generally, but were intended to prevent or discourage disruption of classes and instruction

by demonstrators, both student and non-student, inside and within close proximity to school buildings. As is stated in Appellant's brief (p. 6), both ordinances were passed a month before the arrest and in response to a series of incidents which had occurred.

It is generally held that the orderly and efficient process of education and the protection of schools is a legitimate state and local concern. The old 1870 Illinois Constitution provides, Article VIII, "Education—the general assembly shall provide a thorough and efficient system of free schools, whereby all children of this state may receive a good common school education." The new 1970 Illinois Constitution reaffirms the duty to provide "an efficient system of high-quality public educational institutions and services," Article X, Section 1.

Under the general police power given to municipalities by the legislature, a city may enact ordinances dealing specifically with the operation of its schools. The new Illinois Constitution granting the City of Rockford broad Home Rule powers does nothing to limit the responsibility of the municipality in this area.

This duty cannot be discharged without some restriction on time, place and manner of free speech and assembly.

The Board of Education of Community Unit School District v. *Redding,* 32 Ill. 2d 567, 207 N. E. 2d 427, (1965), a case involving "peaceful picketing by janitors participating in a labor dispute stated that (p. 431) "However, the premise that peaceful picketing is immune from all regulation and control is a false one. While picketing has an ingredient of communication, the cases make it clear that it cannot be dogmatically equated with constitutionally protected freedom of speech, and that picketing is more than free speech because picket lines are designed to exert, and do exert, influences which produce actions and consequences different from other modes of communication,"

and further states, As stated by the late Mr. Justice Frankfurter in the Hughes case: 'It has been amply recognized that picketing, not being the equivalent of speech as a matter of fact, is not its inevitable legal equivalent. Picketing is not beyond the control of a state if the manner in which picketing is conducted or the purpose which it seeks to effectuate gives grounds for its disallowance. A state is not required to tolerate in all places and all circumstances even peaceful picketing by an individual.' 339 U. S. at 465-466, 70 S. Ct. at 721, 722, 94 L. Ed. at 992.

"Apart from this, however, the effect of the influence exerted by the picketing was to impede and obstruct a vital and important governmental function—a proper and efficient education of our children—making its curtailment necessary to protect the patiently overriding public interest."

This general principle, the right to reasonably regulate and restrict free speech and assembly in and about schools has been recognized by this Court.

In *Tinker* v. *Des Moines Independent Community School District*, 393 U. S. 503, at 507 (1969), a case involving symbolic protest by some students, the Court said at 507, "By and large, public education in our Nation is committed to the control of state and local authorities. Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values *Epperson* v. *Arkansas*, 393 U. S. 97, at 104 (1968)."

The Rockford picketing ordinance is similar in purpose and comparable in form to the statute discussed in the second *Cox* case, *Cox* v. *Louisiana*, 379 U. S. 559 (1965). The Louisiana statute read (p. 560), "Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge

of his duty pickets or parades in or near a building housing a court of the State of Louisiana . . ."

This Court said (p. 562), "There can be no question that a State has a legitimate interest in protecting its judicial system from the pressures which picketing near a courthouse might create. Since we are committed to a government of laws and not of men, it is of the utmost importance that the administration of justice be absolutely fair and orderly. This Court has recognized that the unhindered and untrammeled functioning of our courts is part of the very foundation of our constitutional democracy. See *Wood* v. *Georgia*, 370 U. S. 375, 383 L. Ed. 2d 569, 576, 82 S. Ct. 1364."

It is submitted that the administration of education is as much a legitimate state concern as "the administration of justice." Without both a country cannot long survive. Whether protection be that of the courthouse or the school house, there must be some safeguards.

The instant ordinances are legitimate restrictions in aid of the local control of the educational process.

B. The Rockford ordinances are reasonable in their regulation of speech, picketing and assembly. They are neither vague nor overly broad.

The duty and responsibility to regulate free speech and assembly insofar as it may interfere with orderly and efficient education being clear, the question remains: What is a reasonable regulation to accomplish this end?

Objection is made that the Rockford ordinances are "overly broad," that "these broad Rockford ordinances punish exercise of First Amendment rights without regard to the intention of the citizen . . . that they punish the use of streets and public places for the peaceful communication of views." (Br. 13)

On the contrary, it is contended that these ordinances are reasonably narrow as to time, place, and manner of demonstration and readily understandable.

It is hard to distinguish between "overly broad" and "vague". An ordinance can be too broad because it is too vague. The statute in *Thornhill* v. *Alabama*, 310 U. S. 88 (1940) relied upon by Appellant involved a statute applying not to school premises, but virtually everywhere. It read (pg. 91), "(1) Any person who, without a just cause or legal excuse therefor goes near to or *loiters about* the premise or place of business of *any other person* . . . engaged in a lawful business . . . or (2) who *pickets* the works or place of business of *such other persons* . . ."

This Court taking the statute in its entirety, both the first and second offense, held that picketing would fall under the first section and that this statute prohibited any and every conceivable type of dissemination of labor dispute information.

The Thornhill statute was obviously too broad in that it prohibited any expression of free speech or any assembly in almost any manner at almost any place, contrary to the provisions of the First Amendment. It was also vague, contrary to the provisions of the Fourteenth Amendment.

In sharp contrast, 18.1(i) prohibits a person who "knowingly pickets or demonstrates on a public way within 150 feet of any primary or secondary school building while the school is in session and one-half hour before the school is in session and one-half hour after the school session has been concluded."

One hundred fifty feet from the building is definite, narrow and precise. The school building boundary is generally a wall or an entrance, and 150 feet or 50 yards can be easily paced off. It seemed to the legislators a sufficient distance to prevent or discourage the inevitable distraction of picketing and demonstrating to the student in class,

but sufficiently close to afford adequate and effective protest. 1500 feet might well be construed unreasonable. 50 feet would serve no useful purpose.

The spatial limitations of the ordinance would be considered reasonable to demonstrators where the main purpose is to disseminate views and opinions. If the group genuinely wanted to have their opinion registered on the minds of the students and teachers, the 150 foot limitation would ordinarily suffice for this purpose. However, if the demonstrators were more intent on disruption from the shouts, noise and antics so often found in peaceful picketing, 150 feet would indeed be distasteful.

A distance less than 150 feet obviously permits and encourages disruption about the entrances and exists of a school. Although generally, high schools have the bulk of the students entering in the morning and leaving in the afternoon, there is a certain amount of traffic through the entrances during the day. In this case, the far sidewalk, on the other side of the street, was over 150 feet away from the building. The nearer sidewalk was well within 150 feet. It can be presumed that the Rockford legislators took into consideration the location of the Rockford school buildings when they decided on the 150 foot limitation.

The 150 foot limitation certainly doesn't exclude the use of Rockford streets and public places "for peaceful communication of views". Rockford, Illinois is a city of 145,000 people. There remain miles of streets, scores of public places still available to demonstrators or pickets.

The ordinance confining the time of demonstration essentially to while the student is in class and a short period before and after the classroom session is intended to avoid entrance way disruption. It is eminently reasonable in its limitation. The limitation is sufficiently precise. It is not too difficult to determine when school is in session or going to be in session. An ordinance could set certain

times, i.e., from 8:30 a.m. to 4:30 p.m. The difficulty is not all school sessions start and end at the same time.

The "anti-noise or diversion" ordinance (sec. 19.2a) is similarly narrow in scope. In space it is confined to public and private grounds adjacent to the school buildings. This would not include streets or sidewalks other than those surrounding the building. It then prohibits "any person who shall willfully make or assist in the making of any noise or diversion which disturbs or tends to disturb the peace or good order of such school session or class thereof . . ." In time it is confined to "the school session or class." It further extends the time to "when the school premises are used for any gathering or function during the day or night time."

Again, this ordinance is narrowly limited as to time and place. The time and place is sufficient, precise or easily ascertainable.

Appellant complains, "These broad Rockford ordinances punish exercise of First Amendment rights without regard to the intention of the citizen who, in this case, sought no more than to peacefully voice his grievances and those of his fellow citizens." (Br. 13)

The "intention" of the Appellant-citizen, if by "intention" we mean his mental process at the time of the violation, would be indeed difficult to determine. Intention in these situations can only be determined circumstantially by conduct. His conduct was such as to fall within the prohibition of both ordinances. He was picketing within 150 feet of the school building, and he was making a noise or diversion which was disrupting the class.

This Court, in commenting upon the second *Cox* case, *supra*, said (p. 562), "This statute, unlike the two previously considered, is a precise, narrowly drawn regulatory statute which proscribes certain specific behavior. *Cf. Edwards* v. *South Carolina*, 372 U. S. 229, 236, 9 L. ed. 2d

697, 702, 83 S. Ct. 860. It prohibits a particular type of conduct, namely, picketing and parading, in a few specified locations, in or near court houses." The Rockford anti-picketing ordinance and its companion, anti-noise ordinance aply to a few specified locations. While it is admitted that there are generally more school houses than court houses in most communities, "150 feet of a building" is more precise than "in or near a building." "Pickets or demonstrates" is as specific as "picketing or parading." A particular type of conduct is described in both laws. Both seek to protect a particular public interest.

The Appellant's activities on the day in question were not merely symbolic demonstration as was that of the student wearing a black arm band in class as in *Tinker* v. *Des Moines Independent Community School District*, 393 U. S. 503, 89 S. Ct. 733 (1969), or the draft protestor in *Cohen* v. *California*, 403 U. S. 15; 91 S. Ct. 1780 (1971), with the legend on his sweatshirt. This conduct by students, while perhaps irritating to some people, should ordinarily not result in classroom disruption. Appellant, who was not a student, was engaged in a completely different type of activity.

Appellant argues, "It would appear to be impossible, then, in light of the *Tinker* case to justify ordinances so broad they punish peaceful expression of views *outside* the school when such expression *inside* the school falls within the protected orbit of freedom of communication of ideas." (Br. 13-14)

Appellant constantly tries to equate symbolic protest with picketing. Certainly an ordinance prohibiting picketing *inside* the school, through the hallways and classrooms, could hardly be held unconstitutional.

We are confident that were Appellant merely walking by West High School wearing a black arm band, (Tinker), no arrest would have been made. Except for the fact that he

was not a student, he was free to wear any symbolic protest insigina inside the school building.

The attempt to constrne the Rockford ordinances as a complete denial of all freedom of speech and every right of assembly pervades appellant's brief. On page 19, Appellant, after pointing out that poverty and lack of control of radio, TV, newspapers and even easy access to printed handbills make the use of streets important for protest, states that the City of Rockford denies the use of public streets and hidewalks for voicing religious, political and social views. This is not the case. There are only some public streets and sidewalks which are restricted.

This being the case, the Rockford ordinances are proper. As said in the second *Cox* case, *supra*, p. 562, "A state may adopt safeguards necessary and appropriate to assure that the administration of justice at all stages is free from outside control and influence. A narrowly drawn statute such as the one under review is obviously a safeguard both necessary and appropriate to vindicate the State's interest in assuring justice under law."

The Rockford ordinances are designed to assure efficient and orderly education under the law. The ordinances are narrow but still serve their purpose. They are limited to schools and the area around schools. They are not dissimilar from ordinances establishing Quiet Zones around hospitals or mental institutions. They are not dissimilar from traffic ordinances restricting the speed limit around schools when school is in session. They are not overly broad.

Nor are the Rockford ordinances vague. By the use of plain, everyday language, they are sufficiently specific to give adequate notice of their violation.

This point was considered at length in the Illinois Supreme Court *Grayned* decision but not mentioned in the *Mosley* opinion. The Illinois Supreme Court said

at page 867: "The defendant first argues that this ordinance is unconstitutional on its face because its 'terms are so vague that they fail to give the notice (of what conduct is prohibited) required by the Due Process Clause of the Fourteenth Amendment, and are so broad as to condemn the exercise of the First Amendment freedoms.' He complains repeatedly that the ordinance vests unlimited discretion in law enforcement officials to determine the prohibited conduct. We have recently considered and sustained the constitutionality of ordinances and statutes which have been challenged on grounds of being vague and overly broad, including the grounds, which are complained of here, that prescribed conduct was not sufficiently specified and that police were given too broad a discretion in determining whether conduct was prescribed. (see *City of Chicago* v. *Fort*, 46 Ill. 2d 12; *City of Chicago* v. *Meyer*, 44 Ill. 2d 1; *City of Chicago* v. *Lawrence*, 42 Ill. 2d 461; *People* v. *Raby*, 40 Ill. 2d 392.) Much of what we said there has application here and there is no necessity of repetitious or extended discussion. We do observe that while the defendant charges that terms appearing in the ordinance such as 'noise' and 'diversion' lack constitutional precision and are too indefinite. Terms such as 'alarm,' 'disturb,' 'interfere with,' and 'hinder' have been determined by us to comply with the constitutional requirements of specificity. (*City of Chicago* v. *Lawrence*, 42 Ill. 2d 461; *People* v. *Raby*, 40 Ill. 2d 392.) The terms here are not constitutionally objectionable."

It is difficult to see how either ordinance could be made more specific. There is nothing vague about 150 feet from a building; "while school is in session" and "picketing or demonstrating on a public way" seem clear enough.

"A law is 'vague' when a person of common understanding cannot know what is forbidden," *Coates* v. *Cincinnati*, 402 U. S. 611 (1971).

Indeed, Appellant has difficulty in describing his conduct in terms other than those used in the ordinance. Appellant's brief (p. 6) states that he was one of the 200 people participating in a demonstration in front of Rockford's West High School. "The demonstrators were walking peacefully on the public sidewalk within 150 feet of the school, carrying signs. . . . The demonstrators included students, former students, parents of students and other concerned citizens. Grayned himself was not a student at the time of his arrest."

The incident is described as a demonstration and Appellant a demonstrator on page 9 of Appellant's brief.

Appellant complains picketing has never been defined in judicial opinions or otherwise. (Br. 21) Assuming for a moment that picketing has not been defined, this omission doesn't necessarily result in uncertainty. Perhaps the contrary is true. Many words are not defined in judicial opinions. When 200 people are marching up and down, carrying signs, they are "picketing". They are also "demonstrating", especially when they are making noise, causing a diversion resulting in disturbing the peace or good order of such school session or class thereof.

Certainly, common usage no longer confines picketing to labor disputes. In the past several years, labor picketing has been regulated to a minor role in comparison with picketing for social, political or economic protest.

This Court as recently as *Coates* v. *Cincinnati, supra,* uses the term at page ____: "Even if the assembled defendants in this case were demonstrating and picketing, we have long recognized that picketing is not solely a communicative endeavor and has aspects which the State is entitled to regulate even though there is incidental impact on speech."

The second *Cox* case speaks of "picketing and parading" (pp. 567, 578). As early as 1941, *People* v. *Levner,* 30 NYS

(2d) 487 (1941), defined peaceful picketing, both labor and non-labor (at p. 490) "viewed in this light peaceful picketing is a publicity device, a method of giving expression to opinions on vital economic, social and political issues."

Objection is made that Section 19.2, "willfully making or assisting in the making of a noise or diversion which disturbs or intends to disturb the peace or good order of the school," is vague and depends on intent or the sensitivity of unidentified persons. (Br. 22) The vice of the "anti-noise or diversion ordinance" is that its standard is wholly subjective, i.e., depends upon the judgment of some unidentified person or persons . . . that "any noise or diversion disturbs or tends to disturb the peace or good order of such school or class thereof." (Br. 21-22)

Of course, making a noise or diversion which disturbs peace or good order requires someone to make a judgment. It commences with the school administrator, making a complaint, goes on to the police officers who make an arrest, thence to the juror who determines from the facts whether the conduct falls within the ordinance before rendering a verdict and ends with the magistrate who enters judgment. These judgments are subjective in the sense that they are not amenable to objective determination. Noise is not defined in terms of decibels. "Diversion", "disturbing the peace and good order" are not broken down in the ordinance to a multitude of factual situations.

Some subjectivity is inherent in the enforcement of almost any ordinance of a breach of peace nature. It does not follow that no standards exist at all; that its enforcement is dependent upon some unidentified person's sensitivity. The Rockford ordinances are not like the Cincinnati law rejected in *Coates*, "making it a criminal offense for 'three or more persons to assemble . . . on any of the

sidewalks . . . and there conduct themselves in a manner *annoying to persons* passing by . . .' " They are narrower in application and much more objective in the determination of its prohibited conduct.

Although, "conduct that annoys some people does not annoy others." *Coates, supra,* p. ....., may be subjective, conduct "that tends to disturb the peace and good order of such school session" (anti-noise ordinance) is easily determined. If there is noise and the students are looking out windows and otherwise not studying, the peace and good order of the session is disturbed.

Appellant's brief (p. 16) compares the Rockford ordinances to the Birmingham ordinances held invalid in *Shuttleworth* v. *City of Birmingham,* 394 U. S. 147, stating that the "Rockford ordinances are substantially worse than the Birmingham ordinances . . . because the Rockford ordinances makes no provision for licensing and only the whim or complaint of a police officer in arresting or charging persons picketing or demonstrating would allow the use of Rockford streets for purposes historically protected by the Constitution and the Court of the United States." (Br. 16).

Shuttleworth involved a licensing ordinance applying to *all* of the streets in Birmingham. The ordinance authorized members of the City Commission to refuse the permit completely at their discretion, "if required by public welfare, peace, safety, health, decency, good order, morals or convenience." Again in sharp contrast to the Rockford ordinances, we have in *Shuttleworth,* a extremely broad ordinance covering every street in Birmingham, coupled with a vague, completely subjective standard so that no one could claim a license as a matter of right. Moreover, it was not an ordinance designed to protect any specific state or local problem area such as court houses or schools.

The Rockford ordinances are not comparable to the stat-

ute in *Cohen* v. *California, supra;* disturbing the peace of any neighborhood or person by offensive conduct.

The anti-picketing ordinance is quite objective and leaves no room for sensitivity.

Every person is put on notice that if within the prescribed area and at the time stated, he so conducts himself that the students in the school are disturbed or distracted from normal school affairs, that he then runs the risk of being charged with a violation of the ordinance, irrespective of his particular conduct which might or might not be proper at a different time or place. The enforcement of said ordinance is not left to the subjective discretion or whim of a police officer, as defendant contends, but with a court and jury charged with the duty of determining whether or not from the evidence and within the law that a school has been disrupted and that the defendant's conduct, in violation of the ordinances, caused or contributed to cause the disruption. These are the kind of fact questions which must be decided in almost every ordinance or statute violation case.

II.

THE EXEMPTION OF LABOR DISPUTES IN SECTION 18.1(i) DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE.

Appellant claims that the "anti-picket and demonstration ordinance" violates the equal protection clause of the Fourteenth Amendment. No such claim is made concerning 19.2. This argument is based upon Justice Black's dissent in the second *Cox* case wherein he stated it was discriminatory to deny the Appellant and a group the use of the streets because of their views against racial discrimination, while allowing another group to use the streets to voice opinions on other subjects.

First the ordinance was framed to protect the classroom and the educational processes from disruption. There are

and have been in high schools many protests which involve matters other than racial. The firing of a teacher has been known to result in picketing and demonstration. Protest has arisen out of regulations regarding wearing apparel and hair styles. Situations arising out of high school sports have been known to result in protest demonstration and disruption. Indeed in this case the main controversy revolved around whether a Black girl should or shouldn't be a cheerleader. (Br. 9) Conduct such as the Appellant's, if it were related to non-racial school problems, would be dealt within a similar manner, and the ordinance would, without question, apply.

The Illinois Supreme Court Grayned opinion, in discussing this point (Pg. 868) said: "The defendant's complaint is directed at the part of the ordinance which provides that peaceful picketing of a school involved in a labor dispute is not prohibited. However, we do not regard the classification in the ordinance as arbitrary. While a classification cannot, of course, be arbitrary, this Court has said: 'In order to authorize a judicial review of such classifications it must clearly appear that there is no fair reason for the law that would not require with equal force its extension to others not included. The legislature may determine upon what differences a distinction may be made for the purpose of statutory classification, between provisions otherwise having resemblance, if such power is not arbitrarily exercised and the distinction has a reasonable basis.' (*Bagdonas v. Liberty Land and Investment Co.*, 309 Ill. 103, 109.) Too, we said in *People ex rel. Conservation District v. Lenover*, 43 Ill. 2d 209, 219: 'The burden of proving the arbitrariness of a classification is on the one who challenges it.' And, at page 217, 251 N. E. (2d) at page 180: 'Only if it can be said that the classification is clearly unreasonable and palpably arbitrary will a court declare the statute invalid.' We cannot say that the City Council of Rockford acted arbitrarily here in making the classification. Whether the

council considered that the livelihood of persons involved in a labor dispute would typically be concerned or that it was familiar with the usual form of labor picketing or whether other considerations led to the classification we cannot say. But we can say it would be arbitrary for us to conclude from this distance under the circumstances that the act of the city was one of arbitrary discrimination."

It should be pointed out that labor dispute exception is a reasonable classification. There is no question as admitted by Appellant and affirmed by Appellee that the Rockford ordinances were enacted to prevent and discourage school disruptions which were widespread and frequent. Both ordinances restricted their application to times when the school was in session. In the unlikely event of a labor dispute involving a school, the probabilities are this would occur eithe while the school was being built, at which time it would not be occupied by the students, or while being repaired, which ordinarily would occur during vacations. The possibility of labor picketing in front of schools is almost non-existent.

The City of Rockford is in complete agreement with the argument and authorities advanced on this point on pp. 26-30 of the City of Chicago-Petitioner's brief in the consolidated Mosley case.

The language in *Williamson* v. *Lee Optical of Oklahoma, Inc.*, 348 U. S. 483 (1955), is particularly pertinent: "The problem of legislative classification is a perennial one, admitting of no doctrinaire definition. Evils in the same field may be of different dimensions and proportions, requiring different remedies. Or so the legislature may think. *Tigner* v. *Texas*, 310 U. S. 141. Or the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. *Semler* v. *Dental Examiners*, 294 U. S. 608. The legislature may select one phase of one field and apply a remedy there, neglecting

the others, *A. F. of L.* v. *American Sash Co.*, 335 U. S. 538. The prohibition of the Equal Protection Clause goes no further than the invidious discrimination."

If the classification has some relevancy to the situation to be controlled, the classification is valid. *McGowan* v. *Maryland*, 366 U. S. 420, at 426 (1961).

Classification in all areas pervades municipal ordinances and state statutes. If there is a legitimate reason for the classification, it should be upheld. Here Rockford, along with other cities and school districts, was confronted with disruption of its schools from a multitude of people with a multitude of causes—none of which involved labor unions or labor disputes. There being no abuse in the labor area, the ordinance exempted it. Legislators pass prohibitory ordinances generally in response to some pressing need.

The exemption does not represent a preference in some views over others, but rather an effort to prohibit activities which tend to create a disturbance as opposed to activities which do not.

III.

ALTHOUGH APPELLANT DOES NOT RAISE THE POINT SPECIFICALLY IN HIS BRIEF, THERE ARE MANY REFERENCES TO CRIME AND IMPRISONMENT.

"What the City of Rockford has done . . . is convict Appellant of a crime . . ." (Br. 16) "Under Section 1.9 of the Rockford Ordinances, failure to pay a fine, even if the failure is the result of poverty of the defendant could result in imprisonment." (Br. 27)

These statements are not true.

The Illinois Statutes have long prohibited imprisonment for this type of ordinance violation. Chapter 24, Ill. Rev. Statutes (1967), 1-2-1 and 1-2-9.

Incidentally, the imprisonment section in 1.9 of the Rockford ordinances was eliminated on January 19, 1970 in conformity with state statute.

The Illinois Supreme Court in its Grayned opinion (p. 868) disposed of this contention with the following language: "It is next contended that section 19.2(a) is void because the penalty provisions applicable to the ordinance would exceed the power to impose penalties granted to municipalities by the legislature. Since section 19.2(a) itself does not contain a provision for a penalty, the general penalty section of the Code of Ordinances applies. That section (City of Rockford Code of Ordinances Ch. 28, Sec. 1.8) provides, so far as is pertinent: 'It shall be unlawful for any person to violate or fail to comply with any provision of this Code and where no specific penalty is provided therefor, the violator shall be punished by a fine not less than ten dollars and not exceeding two hundred dollars or imprisonment for a term not exceeding six months or by both such fine or imprisonment . . .'

"The power of a municipality to provide for fines or penalties, as of the date of the violation here, did not include any authority to jail an offender, excepting the authority to jail in the event of failure to satisfy a fine or costs. (Ill. Rev. Stat. 1967, Ch. 24, Par. 1-2-1, Par. 1-2-9) Since a municipality can legislate only upon or with reference to that which has been authorized by the General Assembly (*People ex rel. Skokie Town House Builders, Inc.* v. *Village of Morton Grove*, 16 Ill. 2d 183, 189), that portion of the Rockford ordinance which provided for incarceration attempted to exceed the conferred authority. We consider, however, that this defect does not affect the remainder of the penalty section, that is, Section 1.8 absent the power to jail provision, or the section defining the substantive violation, that is, Section 19.2(a). In *Brown* v. *City of Chicago*, 42 Ill. 2d 501, 505, we said: 'If what

remains after the invalid portion is stricken is complete in itself and capable of being executed wholly independently of that which is rejected, the invalid portion does not render void the entire ordinance unless it can be said that the city council would not have passed it with the invalid portion eliminated.' We judge that the remainder of the ordinance is complete in itself and capable of being independently executed."

The defendant was fined twenty-five dollars plus costs on each ordinance violation. Since he was not sentenced to imprisonment he has no standing in this Court to question the validity of that part of Section 1-8, Ch. 1, Rockford Code of Ordinances, which provides for imprisonment. *City of Chicago* v. *Vokes,* 28 Ill. 2d 475, 193 N. E. 2d 40; *Village of Itasca* v. *Luehring,* 4 Ill. 2d 425.

Furthermore, Section 1.5 of the Rockford Code of Ordinances as existed at the time of the arrest read and reads as follows: "The sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence or paragraph of this Code shall be declared unconstitutional, invalid or unenforceable by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality, invalidity or unenforceability shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code."

The new Illinois State Constitution, Article I, Section 14 provides as follows: "No person shall be imprisoned for failure to pay fine in a criminal case unless he has been afforded adequate time to make payment, in installments if necessary, and has willfuly failed to make payments." Under the circumstances; it is hardly possible that Appellant could be imprisoned because of poverty or any other reason.

Finally, Appellant refers to the violation as being a conviction of a crime (Br. 16). It is generally held in

Illinois that the violation of this type of ordinance is at most quasi criminal (*See People* v. *Stout,* 356 N. E. 2d 319; *City of Highland Park* v. *Curtis,* 83 Ill. App. 2d 218, 226 N. E. 2d 870; *City of Chicago* v. *Ballinger,* 45 Ill. App. 2d 407, 195 N. E. 2d 739.)

CONCLUSION.

It is respectfully submitted that a city or school board's interest in maintaining a functioning school system is paramount; it is no less important than the right to keep the streets open and available for public traffic or in protecting its judicial systems from pressures in and around the court house. Legislative bodies have the power to limit First Amendment rights in areas of extreme public importance. The public supported schools of our city are of such importance.

The judgment of the Illinois Supreme Court should be sustained and the Rockford ordinances declared valid.

The recital of facts supplied by the Appellant in the Illinois Supreme Court Opinion and in Appellant's appendix and brief is sufficient to warrant affirmance of the constitutionality of the anti-picketing Rockford ordinance. A picket line of 200 persons within 150 feet of a building during school hours are all the facts necessary to constitute a violation.

Respectfully submitted,

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NOTE: Where it is deemed desirable, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

GRAYNED *v.* CITY OF ROCKFORD

APPEAL FROM THE SUPREME COURT OF ILLINOIS

No. 70–5106. Argued January 19, 1972—Decided June 26, 1972

1. Anti-picketing ordinance, virtually identical with one invalidated as violative of equal protection in *Police Department of Chicago* v. *Mosley*, *ante*, p. —, is likewise invalid. Pp. 3–4.

2. Anti-noise ordinance prohibiting a person while on grounds adjacent to a building in which a school is in session from willfully making a noise or diversion that disturbs or tends to disturb the peace or good order of the school session is not unconstitutionally vague or overbroad. The ordinance is not vague since, with fair warning, it prohibits only actual or imminent, and willful, interference with normal school activity, and is not a broad invitation to discriminatory enforcement. *Cox* v. *Louisiana*, 379 U. S. 536; *Coates* v. *Cincinnati*, 402 U. S. 611, distinguished. The ordinance is not overbroad as unduly interfering with First Amendment rights since expressive activity is prohibited only if it "materially disrupts classwork." *Tinker* v. *Des Moines School District*, 393 U. S. 503, 513. Pp. 4–17.

46 Ill. 2d 486, 263 N. E. 2d 866, affirmed in part and reversed in part.

MARSHALL, J., delivered the opinion of the Court, in which BURGER, C. J., and BRENNAN, STEWART, WHITE, POWELL, and REHNQUIST, JJ., joined. DOUGLAS, J., filed an opinion dissenting in part and joining in Part I of the Court's opinion. BLACKMUN, J., filed a statement joining in the judgment and in Part I of the Court's opinion and concurring in the result as to Part II of the opinion.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 70-5106

Richard Grayned, Appellant,
v.
City of Rockford.

On Appeal from the Supreme Court of Illinois.

[June 26, 1972]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Appellant Richard Grayned was convicted for his part in a demonstration in front of West Senior High School in Rockford, Illinois. Negro students at the school had first presented their grievances to school administrators. When the principal took no action on crucial complaints, a more public demonstration of protest was planned. On April 25, 1969, approximately 200 people—students, their family members, and friends—gathered next to the school grounds. Appellant, whose brother and twin sisters were attending the school, was part of this group. The demonstrators marched around on a sidewalk about 100 feet from the school building, which was set back from the street. Many carried signs which summarized the grievances: "Black cheerleaders to cheer too"; "Black history with black teachers"; "Equal rights, Negro counselors." Others, without placards, made the "power to the people" sign with their upraised and clenched fists.

In other respects, the evidence at appellant's trial was sharply contradictory. Government witnesses reported that the demonstrators repeatedly cheered, chanted, baited policemen, and made other noise that was audible in the school; that hundreds of students were distracted from their school activities and lined

the classroom windows to watch the demonstration; that some demonstrators successfully yelled to their friends to leave the school building and join the demonstration; that uncontrolled latenesses after period changes in the school were far greater than usual, with late students admitting that they had been watching the demonstration; and that, in general, orderly school procedure was disrupted. Defense witnesses claimed that the demonstrators were at all times quiet and orderly; that they did not seek to violate the law, but only to "make a point"; that the only noise was made by policemen using loudspeakers; that almost no students were noticeable at the schoolhouse windows; and that orderly school procedure was not disrupted.

After warning the demonstrators, the police arrested 40 of them, including appellant.[1] For participating in the demonstration, Grayned was tried and convicted of violating two Rockford ordinances, hereinafter referred to as the "anti-picketing" ordinance and the "anti-noise" ordinance. A $25 fine was imposed for each violation. Since Grayned challenged the constitutionality of each ordinance, he appealed directly to the Supreme Court of Illinois. Ill. Sup. Ct. Rule 302. He claimed that the ordinances were invalid on their face, but did not urge that, as applied to him, the ordinances had punished constitutionally protected activity. The Supreme Court of

[1] Police officers testified that "there was no way of picking out any one in particular" while making arrests. Record, p. 66. However, apparently only males were arrested. Record, p. 65, 135, 147. Since appellant's sole claim in this appeal is that he was convicted under facially unconstitutional ordinances, there is no occasion for us to evaluate either the propriety of these selective arrests or the sufficiency of evidence that appellant himself actually engaged in conduct within the terms of the ordinances. MR. JUSTICE DOUGLAS, in concluding that appellant's particular behavior was protected by the First Amendment, reaches a question not presented by the parties here or in the court below. See Tr. of Oral Arg. 16–17; Jurisjurisdictional statement p. 3; *City of Rockford* v. *Grayned*, 46 Ill. 2d 492, 494 (1970).

Illinois held that both ordinances were constitutional on their face. 46 Ill. 2d 486 (1970). We noted probable jurisdiction, 404 U. S. 820 (1971). We conclude that the anti-picketing ordinance is unconstitutional, but affirm the court below with respect to the anti-noise ordinance.

I

At the time of appellant's arrest and conviction, Rockford's anti-picketing ordinance provided that

> "A person commits disorderly conduct when he knowingly:
>
> . . . . . .
>
> "(i) Pickets or demonstrates on a public way within 150 feet of any primary or secondary school building while the school is in session and one-half hour before the school is in session and one-half hour after the school session has been concluded, provided that this this subsection does not prohibit the peaceful picketing of any school involved in a labor dispute . . . ." Code of Ordinances, c. 28, § 18.1 (i).

With the exception of two unimportant words, this ordinance is identical to the Chicago disorderly conduct ordinance we have today considered in *Police Department of Chicago* v. *Mosley, ante*. For the reasons given in *Mosley*, we agree with the dissenting Justice Schaefer below, and hold that § 18.1 (i) violates the Equal Protection Clause of the Fourteenth Amendment. Appellant's conviction under this invalid ordinance must be reversed.[2]

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[2] In November 1971, the anti-picketing ordinance was amended to delete the labor picketing proviso. As Rockford notes, "This amendment and deletion had, of course, no effect on Appellant's personal situation." Brief, p. 2. Necessarily, we must consider the facial constitutionality of the ordinance in effect when appellant was arrested and convicted.

II

The anti-noise ordinance reads, in pertinent part, as follows:

> "[N]o person, while on public or private grounds adjacent to any building in which a school or any class thereof is in session, shall willfully make or assist in the making of any noise or diversion which disturbs or tends to disturb the peace or good order of such school session or class thereof . . . ." Code of Ordinances, c. 28, § 19.2 (a).

Appellant claims that, on its face, this ordinance is both vague and overbroad, and therefore unconstitutional. We conclude, however, that the ordinance suffers from neither of these related infirmities.

A. Vagueness

It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning.[3] Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those

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[3] *E. g., Papachristou* v. *City of Jacksonville*, 405 U. S. 156, 162 (1972); *Cramp* v. *Board of Public Instruction*, 368 U. S. 278, 287 (1961); *United States* v. *Harriss*, 347 U. S. 612, 617 (1954); *Jordan* v. *De George*, 341 U. S. 223, 230–232 (1951); *Lanzetta* v. *New Jersey*, 306 U. S. 451, 453 (1939); *Connally* v. *General Construction Co.*, 269 U. S. 385, 391 (1926); *United States* v. *Cohen Grocery Co.*, 255 U. S. 81, 89 (1921); *International Harvester Co.* v. *Kentucky*, 234 U. S. 216, 223–224 (1914).

who apply them.[4] A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application.[5] Third, but related, where a vague statute "abut[s] upon sensitive areas of basic First Amendment freedoms,"[6] it "operates to inhibit the exercise of [those] freedoms."[7] Uncertain meanings inevitably lead citizens to "'steer far wider of the unlawful zone' . . . than if the boundaries of the forbidden areas were clearly marked."[8]

Although the question is close, we conclude that the anti-noise ordinance is not impermissibly vague. The court below rejected appellant's arguments "that pro-

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[4] *E. g., Papachristou* v. *City of Jacksonville, supra; Coates* v. *Cincinnati*, 402 U. S. 611, 614 (1971); *Gregory* v. *Chicago*, 394 U. S. 111, 120 (1969) (Black, J., concurring); *Interstate Circuit* v. *Dallas*, 390 U. S. 676, 684–685 (1968); *Ashton* v. *Kentucky*, 384 U. S. 195, 200 (1966); *Giaccio* v. *Pennsylvania*, 382 U. S. 399 (1966); *Shuttlesworth* v. *Birmingham*, 382 U. S. 87, 90–91 (1965); *Kunz* v. *New York*, 340 U. S. 290 (1951); *Saia* v. *New York*, 334 U. S. 558, 559–560 (1948); *Thornhill* v. *Alabama*, 310 U. S. 88, 97–98 (1940); *Herndon* v. *Lowry*, 301 U. S. 242, 261–264 (1937).

[5] Where First Amendment interests are affected, a precise statutes "evincing a legislative judgment that certain specific conduct be . . . proscribed," *Edwards* v. *South Carolina*, 372 U. S. 229, 236 (1963), assures us that the legislature has focussed on the First Amendment interests and determined that other governmental policies compel regulation. See Kalven, The Concept of the Public Forum, 1965 Sup. Ct. Rev. 1, 32; *Garner* v. *Louisiana*, 368 U. S. 157, 200, 202 (1961) (Harlan, J., concurring).

[6] *Baggett* v. *Bullitt*, 377 U. S. 360, 372 (1964).

[7] *Cramp* v. *Board of Public Instruction*, 368 U. S. 278, 287 (1961).

[8] *Baggett* v. *Bullitt*, 377 U. S. 360, 372, 372 (1964), quoting *Speiser* v. *Randall*, 357 U. S. 513, 526. See *Interstate Circuit* v. *Dallas*, 390 U. S. 676, 684 (1968); *Ashton* v. *Kentucky*, 384 U. S. 195, 200–201 (1966); *Dombrowski* v. *Pfister*, 380 U. S. 479, 486 (1965); *Smith* v. *California*, 361 U. S. 147, 150–152 (1959); *Winters* v. *New York*, 333 U. S. 507 (1948); *Stromberg* v. *California*, 283 U. S. 359, 369 (1931).

scribed conduct was not sufficiently specified and that police were given too broad a discretion in determining whether conduct was proscribed." 46 Ill. 2d 492, 494 (1970). Although it referred to other, similar statutes it had recently construed and upheld, the court below did not elaborate on the meaning of the anti-noise ordinance.[9] In this situation, as Justice Frankfurter put it, we must "extrapolate its allowable meaning." [10] Here, we are "relegated to the words of the ordinance itself," [11] to the interpretations the court below has given to analagous statutes,[12] and, perhaps to some degree, to the interpretation of the statute given by those charged with enforcing it.[13] "Extrapolation," of course, is a delicate task, for it is not within our power to construe and narrow state laws.[14]

With that warning, we find no unconstitutional vagueness in the anti-noise ordinance. Condemned to the use of words, we can never expect mathematical certainty from our language.[15] The words of the Rockford ordinance are marked by "flexibility and reasonable breadth, rather than meticulous specificity," *Esteban* v. *Central Missouri State College*, 415 F. 2d 1077, 1088 (CA8 1969)

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[9] The trial magistrate simply charged the jury in the words of the ordinance. The complaint and verdict form used slightly different language. See n. 24, *infra*.

[10] *Garner* v. *Louisiana*, 368 U. S. 157, 174 (1961) (concurring opinion).

[11] *Coates* v. *Cincinnati*, 402 U. S. 611, 614 (1971).

[12] *E. g., Gooding* v. *Wilson*, — U. S. — (1972).

[13] *E. g., Lake Carriers Association* v. *MacMillian*, — U. S. —, — (1972); *Cole* v. *Richardson*, — U. S. — (1972); *Ehlert* v. *United States*, 402 U. S. 99, 195 (1971); cf. *Poe* v. *Ullman*, 367 U. S. 497 (1961).

[14] *United States* v. *37 Photographs*, 402 U. S. 363, 369 (1971).

[15] It will always be true that the fertile legal "imagination can conjure up hypothetical cases in which the meaning of [disputed] terms will be in nice question." *American Communications Association* v. *Douds*, 339 U. S. 382, 412 (1950).

(BLACKMUN, J.), cert. denied, 398 U. S. 965 (1970), but we think it is clear what the ordinance as a whole prohibits. Designed, according to its preamble, "for the protection of Schools," the ordinance forbids deliberately noisy or diversionary [16] activity which disrupts or is about to disrupt normal school activities. It forbids this willful activity at fixed times—when school is in session—and at a sufficiently fixed place—"adjacent" to the school.[17] Were we left with just the words of the ordinance, we might be troubled by the imprecision of the phrase "tends to disturb." [18] However, in *Chicago* v. *Meyer*, 44 Ill. 1, 4 (1969); and *Chicago* v. *Gregory*, 39 Ill. 2d 47 (1968), reversed on other grounds, 394 U. S. 111 (1969), the Supreme Court of Illinois construed a Chicago ordinance prohibiting, *inter alia*, a "diversion tending to disturb the peace," and held that it permitted conviction only where there was "*imminent* threat of violence." (Emphasis supplied.) See *Gregory* v. *Chicago*, 394 U. S. 111, 116–117, 121–122 (1969) (Black, J., concurring).[19] Since *Meyer* was specifically cited in the opinion below, and it in turn drew heavily on *Gregory*, we think it proper to conclude that the Su-

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[16] "Diversion" is defined by Webster's Third New International Dictionary as "the act or an instance of diverting from one course [or use] to another . . . : the act or an instance of diverting (as the mind or attention) from some activity or concern . . . ; a turning aside . . . : something that turns the mind from serious concerns or ordinary matters and relaxes or amuses."

[17] Cf. *Cox* v. *Louisiana*, 379 U. S. 559, 568–569 (1965) ("near" the courthouse not impermissibly vague).

[18] See *Gregory* v. *Chicago*, 394 U. S. 111, 119–120 (Black, J., concurring); *Gooding* v. *Wilson*, — U. S., —, — (1972); *Craig* v. *Harney*, 331 U. S. 367, 372 (1947); cf. *Chaplinsky* v. *New Hampshire*, 315 U. S. 568 (1942) (statute punishing "fighting words," which have a "*direct* tendency to cause acts of violence," upheld); *Street* v. *New York*, 394 U. S. 576, 592 (1969).

[19] Cf. *Terminiello* v. *Chicago*, 400 Ill. 23 (1948), reversed on other grounds, 337 U. S. 1, 6 (1949).

preme Court of Illinois would interpret the Rockford ordinance to prohibit only actual or imminent interference with the "peace or good order" of the school.

Although the prohibited quantum of disturbance is not specified in the ordinance, it is apparent from the statute's announced purpose that the measure is whether normal school activity has been or is about to be disrupted. We do not have here a vague, general "breach of the peace" ordinance, but a specific statute for the school context, where the prohibited disturbances are easily measured by their impact on the normal activities of the school. Given this "particular context," the ordinance gives "fair notice to whom [it] is directed."[21] Although the Rockford ordinance may not be as precise as the statute we upheld in *Cameron* v. *Johnson*, 390 U. S. 611 (1968)—which prohibited picketing "in such a manner as to obstruct or unreasonably interfere with free ingress or egress to and from" any courthouse—we think that, as in *Cameron*, the ordinance here clearly

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[20] Some intermediate appellate courts in Illinois appear to have interpreted the phrase "tending to" out of the Chicago ordinance entirely, at least in some contexts. *Chicago* v. *Hansen*, 86 N. E. 2d 415, 337 Ill. App. 663 (1949); *Chicago* v. *Holmes*, 88 N. E. 2d 744, 339 Ill. App. 146 (1949); *Chicago* v. *Nesbitt*, 153 N. E. 259, 19 Ill. App. 2d 220 (1958); but cf. *Chicago* v. *Williams*, 195 N. E. 2d 425 (1963).

In its brief, the city of Rockford indicates that its sole concern is with *actual* disruption. "[A] court and jury [is] charged with the duty of determining whether or not . . . a school *has been disrupted* and that the defendant's conduct, no matter what it was, caused or contributed to cause the disruption." Appellee's Brief, p. 16 (emphasis supplied). This was the theory on which the city tried appellant's case to the jury, Record pp. 12–13, although the jury was instructed in the words of the ordinance. As already noted, *supra*, n. 1, no challenge is made here to the Rockford ordinance as applied in this case.

[21] *American Communications Association* v. *Douds*, 339 U. S. 382, 412 (1950).

"delineates its reach in words of common understanding." *Id.*, at 616.

Cox v. *Louisiana*, 379 U. S. 536 (1965), and *Coates* v. *Cincinnati*, 402 U. S. 611 (1971), on which appellant particularly relies, presented completely different situations. In *Cox*, a general breach of the peace ordinance had been construed by state courts to mean "to agitate, to arouse from a state of repose, to molest, to interrupt, to hinder, to disquiet." The Court correctly concluded that, as construed, the ordinance permitted persons to be punished for merely expressing unpopular views.[22] In *Coates*, the ordinance punished the sidewalk assembly of three or more persons who "conduct themselves in a manner annoying to persons passing by . . . ." We held, in part, that the ordinance was impermissibly vague because enforcement depended on the completely subjective standard of "annoyance."

In contrast, Rockford's anti-noise ordinance does not permit punishment for the expression of an unpopular point of view, and it contains no broad invitation to subjective or discriminatory enforcement. Rockford does not claim the broad power to punish all "noises" and "diversions."[23] The vagueness of these terms, by themselves, is dispelled by the ordinance's requirements that (1) the "noise or diversion" be actually incompatible with normal school activity; (2) there be

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[22] Cf. *Edwards* v. *South Carolina*, 372 U. S. 229 (1963); *Cantwell* v. *Connecticut*, 310 U. S. 296, 308 (1940). Similarly, in numerous other cases, we have condemned broadly worded licensing ordinances which grant such standardless discretion to public officials that they are free to censor ideas and enforce their own personal preferences. *Shuttlesworth* v. *Birmingham*, 394 U. S. 147 (1969); *Staub* v. *City Baxley*, 355 U. S. 313 (1958); *Saia* v. *New York*, 334 U. S. 558 (1948); *Schneider* v. *State*, 308 U. S. 147, 163–164 (1939); *Lovell* v. *Griffin*, 303 U. S. 444 (1938); *Hague* v. *CIO*, 307 U. S. 496 (1939).

[23] Cf. *Cox* v. *Louisiana*, 379 U. S. 536, 546–550 (1965); *Edwards* v. *South Carolina*, 372 U. S. 229, 223 (1963).

a demonstrated causality between the disruption which occurs and the "noise or diversion"; and (3) the acts be "willfully" done.[24] "Undesirables" or their "annoying" conduct may not be punished. The ordinance does not permit people to "stand on a public sidewalk . . . only at the whim of any police officer." [25] Rather, there must be demonstrated interference with school activities. As always, enforcement requires the exercise of some degree of police judgment, but, as confined, that degree of judgment here is permissible. The Rockford City Council has made the basic policy choices, and has given fair warning as to what is prohibited. "[T]he ordinance defines boundaries sufficiently distinct" for citizens, policemen, juries, and appellate judges.[26] It is not impermissibly vague.

B. Overbreadth

A clear and precise enactment may nevertheless be "overbroad" if in its reach it prohibits constitutionally protected conduct.[27] Although appellant does not claim that, as applied to him, the anti-noise ordinance has punished protected expressive activity, he claims that the ordinance is overbroad on its face. Because overbroad laws, like vague ones, deter privileged activity, our cases firmly establish appellant's standing to raise an over-

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[24] Tracking the complaint, the jury verdict found Grayned guilty of "Wilfully causing diversion of good order of public school in session, in that while on school grounds and while school was in session, did wilfully make and assist in the making of a diversion which tended to disturb the peace and good order of the school session and class thereof."

[25] *Shuttlesworth* v. *Birmingham*, 382 U. S. 87, 90 (1965).

[26] *Chicago* v. *Fort*, 46 Ill. 2d 12, 16 (1970), a case cited in the opinion below.

[27] See *Zwickler* v. *Koota*, 389 U. S. 241, 249–250 (1967), and cases cited.

breadth challenge.[28] The crucial question, then, is whether the ordinance sweeps within its prohibitions what may not be punished under the First and Fourteenth Amendments. Specifically, appellant contends that the Rockford ordinance unduly interferes with First and Fourteenth Amendment rights to picket on a public sidewalk near a school. We disagree.

"In considering the right of a municipality to control the use of public streets for the expression of religious [or political] views, we start with the words of Mr. Justice Roberts that 'Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.' *Hague* v. *CIO*, 307 U. S. 496, 515 (1939)." *Kunz* v. *New York*, 340 U. S. 290, 293 (1951). See *Shuttlesworth* v. *Birmingham*, 394 U. S. 147, 152 (1969). The right to use a public place for expressive activity may be restricted only for weighty reasons.

Clearly, government has no power to restrict such activity because of its message.[29] Our cases make equally clear, however, that reasonable "time, place and manner" regulations may be necessary to further significant governmental interests, and are permitted.[30] For example,

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[28] *E. g., Gooding* v. *Wilson*, — U. S. — (1972); *Coates* v. *Cincinnati*, 402 U. S. 611, 616 (1971); *Dombrowski* v. *Pfister*, 380 U. S. 479, 486 (1965), and cases cited; *Kunz* v. *New York*, 340 U. S. 290 (1951).

[29] *Conlisk* v. *Mosley, ante*, — U. S. — (1972).

[30] *Cox* v. *New Hampshire*, 312 U. S. 569, 575–576 (1941); *Kunz* v. *New York*, 340 U. S. 290, 293–294 (1951); *Poulos* v. *New Hampshire*, 345 U. S. 395, 398 (1953); *Cox* v. *Louisiana*, 379 U. S. 536, 554–555 (1965); *Cox* v. *Louisiana*, 379 U. S. 559 (1965); *Adderley* v. *Florida*, 385 U. S. 39, 46–48 (1966); *Food Employees* v. *Logan Valley*, 391 U. S. 308, 320–321 (1968); *Shuttlesworth* v. *Birmingham*, 394 U. S. 147 (1969).

two parades cannot march on the same street simultaneously, and government may allow only one. *Cox* v. *New Hampshire*, 312 U. S. 569, 576 (1941). A demonstration or parade on a large street during rush hour might put an intolerable burden on the essential flow of traffic, and for that reason could be prohibited. *Cox* v. *Louisiana*, 379 U. S. 536, 554 (1965). If overamplified loudspeakers assault the citizenry, government may turn them down. *Kovacs* v. *Cooper*, 336 U. S. 77 (1949); *Saia* v. *New York*, 334 U. S. 558, 562 (1948). Subject to such reasonable regulation, however, peaceful demonstrations in public places are protected by the First Amendment.[31] Of course, where demonstrations turn violent, they lose their protected quality as expression under the First Amendment.[32]

The nature of a place, "the pattern of its normal activities, dictates the kinds of regulations of time, place, and manner that are reasonable."[33] Although a silent vigil may not unduly interfere with a public library, *Brown* v. *Louisiana*, 383 U. S. 131 (1966), making a speech in the reading room almost certainly would. That same speech should be perfectly appropriate in a park. The crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time. Our cases make clear that in assessing the reasonableness of regulation, we must weigh heavily the fact that com-

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[31] *Conlisk* v. *Mosley*, *ante*, — U. S. —, — (1972), and cases cited.

[32] See generally Emerson, The System of Freedom of Expression 328–345 (1970).

[33] Wright, The Constitution on the Campus, 22 Vand. L. Rev. 1027, 1042 (1969). Cf. *Cox* v. *Louisiana*, 379 U. S. 559 (1965); *Adderley* v. *Florida*, 385 U. S. 39 (1966); *Food Employees* v. *Logan Valley*, 391 U. S. 308 (1968); *Tinker* v. *Des Moines School District*, 393 U. S. 503 (1969).

munication is involved;[34] the regulation must be narrowly tailored to further the State's legitimate interest.[35] "Access to [the streets, sidewalks, parks, and other similar public places] for the purpose of exercising [First Amendment rights] cannot constitutionally be denied broadly . . . ."[36] Free expression "must not, in the guise of regulation, be abridged or denied."[37]

In light of these general principles, we do not think that Rockford's ordinance is an unconstitutional regulation of activity around a school. Our touchstone is *Tinker* v. *Des Moines School District*, 393 U. S. 503 (1969), in which we considered the question of how to accommodate First Amendment rights with the "special characteristics of the school environment." *Id.*, at 506. *Tinker* held that the Des Moines School District could not punish students for wearing black armbands to school in protest of the Vietnam War. Recognizing that "wide exposure to . . . robust exchange of ideas" is an "important part of the educational process" and should be nurtured, *id.*, at 512, we concluded that free expression could not be barred from the school campus. We made clear that "undifferentiated fear or apprehension of disturbance is not enough to overcome the right to free-

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[34] *E. g., Schneider* v. *State*, 308 U. S. 147 (1939); *Talley* v. *California*, 362 U. S. 60 (1960); *Saia* v. *New York*, 334 U. S. 558, 562 (1948); *Cox* v. *New Hampshire*, 312 U. S. 569, 574 (1941); *Hague* v. *CIO*, 307 U. S. 496, 516 (1939). See generally, Kalven, The Concept of the Public Forum, The Supreme Court Review 1965.

[35] *De Jonge V. Oregon*, 299 U. S. 353, 364–365 (1937); *Lovell* v. *Griffin*, 303 U. S. 444, 451 (1938); *Schneider* v. *State*, 308 U. S. 147, 164 (1939); *Cantwell* v. *Connecticut*, 310 U. S. 296, 307 (1940); *Cox* v. *Louisiana*, 379 U. S. 559, 562–564 (1965); *Davis* v. *Francois*, 395 F. 2d 730 (CA5 1968). Cf. *Shelton* v. *Tucker*, 364 U. S. 479, 488 (1960); *NAACP* v. *Button*, 371 U. S. 415, 438 (1963).

[36] *Food Employees* v. *Logan Valley Plaza*, 391 U. S. 308, 315 (1968).

[37] *Hague* v. *CIO*, 307 U. S. 496, 516 (1939).

dom of expression," *id.*, at 508,[38] and that particular expressive activity could not be prohibited because of a "mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint," *id.*, at 509. But we nowhere suggested that students, teachers, or anyone else has an absolute constitutional right to use all parts of a school building or its immediate environs for his unlimited expressive purposes. Expressive activity could certainly be restricted, but only if the forbidden conduct "materially disrupts classwork or involves substantial disorder or invasion of the rights of others." *Id.*, at 513. The wearing of armbands was protected in *Tinker* because the students "neither interrupted school activities nor sought to intrude in the school affairs or the lives of others. They caused discussion outside of the classrooms, but no interference with work and no disorder." *Id.*, at 514. Compare *Burnside* v. *Byers*, 363 F. 2d 744 (CA5 1966), and *Butts* v. *Dallas Ind. School District*, 436 F. 2d 728 (CA5 1971), with *Blackwell* v. *Issaquena County Board of Education*, 363 F. 2d 749 (CA5 1966).

Just as *Tinker* made clear that school property may not be declared off-limits for expressive activity by students, we think it clear that the public sidewalk adjacent to school grounds may not be declared off-limits for expressive activity by members of the public. But in each case, expressive activity may be prohibited if it "materially disrupts classwork or involves substantial disorder or invasion of the rights of others." *Tinker* v. *Des Moines School District*, *supra*, 393 U. S., at 513.[39]

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[38] Cf. *Hague* v. *CIO*, 307 U. S. 496, 516 (1939).

[39] In *Tinker* itself we recognized that the principle of that case was not limited to expressive activity within the school building itself. *Id.*, at 512 n. 6, 513–514. See *Esteban* v. *Central Missouri State College*, 415 F. 2d 1077 (CA8 1969) (BLACKMUN, J.), cert. denied, 398 U. S. 965 (1970); *Jones* v. *Board of Regents*, 436 F. 2d

We would be ignoring reality if we did not recognize that the public schools in a community are important institutions, and are often the focus of significant grievances.[40] Without interfering with normal school activities, daytime picketing and handbilling on public grounds near a school can effectively publicize those grievances to pedestrians, school visitors, and deliverymen, as well as to teachers, administrators, and students. Some picketing to that end will be quiet and peaceful, and will in no way disturb the normal functioning of the school. For example, it would be highly unusual if the classic expressive gesture of the solitary picketer disrupts anything related to the school, at least on a public sidewalk open to pedestrians.[41] On the other hand, schools could hardly tolerate boisterous demonstrators who drown out classroom conversation, make studying impossible, block entrances, or incite children to leave the schoolhouse.

Rockford's anti-noise ordinance goes no further than *Tinker* says a municipality may go to prevent interference with its schools. It is narrowly tailored to further Rockford's compelling interest in having an undisrupted school session conducive to the students' learning, and does not unnecessarily interfere with First Amendment rights. Far from having an impermissibly

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618 (CA9 1970); *Hammond* v. *South Carolina State College*, 272 F. Supp. 947 (S. C. 1967) cited in *Tinker*.

[40] Cf. *Thornhill* v. *Alabama*, 310 U. S. 88, 102 (1940). It goes without saying that "one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Schneider* v. *State*, 308 U. S. 147, 163 (1939).

[41] Cf. *Jones* v. *Board of Regents*, 436 F. 2d 618 (CA9 1970).

[42] See *Esteban* v. *Central Missouri State College*, 415 F. 2d 1077 (CA8 1968) (BLACKMUN, J.), cert. denied. 398 U. S. 965 (1970); *Barker* v. *Hardway*, 283 F. Supp. 228 (SD W. Va., 1968), aff'd, 399 F. 2d 638 (CA4 1968), cert denied, 394 U. S. 905 (1969) (Fortas, J., concurring).

broad prophylactic ordinance,[43] Rockford punishes only conduct which disrupts or is about to disrupt normal school activities. That decision is made, as it should be, on an individualized basis, given the particular fact situation. Peaceful picketing which does not interfere with the ordinary functioning of the school is permitted. And the ordinance gives no license to punish anyone because of what he is saying.[44]

We recognize that the ordinance prohibits some picketing which is neither violent nor physically obstructive. Noisy demonstrations which disrupt or are incompatible with normal school activities are obviously within the ordinance's reach. Such expressive conduct may be constitutionally protected at other places or other times, cf. *Edwards* v. *South Carolina*, 372 U. S. 229 (1963); *Cox* v. *Louisiana*, 379 U. S. 536 (1965), but next to a school, while classes are in session, it may be prohibited.[45] The anti-noise ordinance imposes no such restriction on expressive activity before or after the school session, while the student/faculty "audience" enters and leaves the school.

In *Cox* v. *Louisiana*, 379 U. S. 559 (1965), this Court indicated that, because of the special nature of the place,[46]

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[43] See *Jones* v. *Board of Regents*, 436 F. 2d 618 (CA9 1970); *Hammond* v. *South Carolina State College*, 272 F. Supp. 947 (S. C. 1967).

[44] Compare *Scoville* v. *Board of Education*, 425 F. 2d 10 (CA7), cert. denied, 400 U. S. 826 (1970); *Dickey* v. *Alabama State Board of Education*, 273 F. Supp. 613 (MD Ala. 1967) (cited in *Tinker*).

[45] Different considerations, of course, apply in different circumstances. For example, restrictions appropriate to a single building high school during class hours would be inappropriate in many open areas on a college campus, just as an assembly which is permitted outside a dormitory would be inappropriate in the middle of a mathematics class.

[46] Noting the need "to assure that the administration of justice at all stages is free from outside control and influence," we emphasized

persons could be constitutionally prohibited from picketing "in or near" a courthouse "with the intent of interfering with, obstructing, or impeding the administration of justice." Likewise, in *Cameron* v. *Johnson*, 390 U. S. 611 (1968), we upheld a statute prohibiting picketing "in such a manner as to obstruct or unreasonably interfere with free ingress or egress to or from any . . . county . . . courthouses."[47] As in those two cases, Rockford's modest restriction on some peaceful picketing represents a considered and specific legislative judgment that some kinds of expressive activity should be restricted at a particular time and place, here in order to protect the schools.[48] Such a reasonable regulation is not inconsistent with the First and Fourteenth Amendments.[49] The anti-noise ordinance is not invalid on its face.[50]

The judgment is

Affirmed in part and reversed in part.

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that "[a] State may protect against the possibility of a conclusion by the public . . . [that a] judge's action was in part a product of intimidation and did not flow only from the fair and orderly working of the judicial process." *Id.*, at 562, 565.

[47] Quoting *Schneider* v. *State*, 308 U. S. 147, 161, we noted that "such activity bears no necessary relationship to the freedom to . . . distribute information or opinion." *Id.*, at 617.

[48] Cf. *Garner* v. *Louisiana*, 368 U. S. 157, 202–203 (1961) (Harlan, J., concurring).

[49] Cf. *Adderley* v. *Florida*, 385 U. S. 39 (1966). In *Adderley*, the Court held that demonstrators could be barred from jailhouse grounds not ordinarily open to the public, at least where the demonstration obstructed the jail driveway and interfered with the functioning of the jail. In *Tinker* we noted that "a school is not like a hospital or a jail enclosure." 393 U. S. 503, 512 n. 6 (1969).

[50] It is possible, of course, that there will be unconstitutional applications; but that is not a matter which presently concerns us. See *Shuttlesworth* v. *Birmingham*, 382 U. S. 87, 91 (1965), and n. 1, *supra*.

MR. JUSTICE BLACKMUN joins in the judgment and in Part I of the opinion of the Court. He concurs in the result as to Part II of the opinion.

SUPREME COURT OF THE UNITED STATES

No. 70-5106

Richard Grayned, Appellant, v. City of Rockford. } On Appeal from the Supreme Court of Illinois.

[June 26, 1972]

MR. JUSTICE DOUGLAS, dissenting in part.

While I join Part I of the Court's opinion, I would also reverse the appellant's conviction under the antinoise ordinance.

The municipal ordinance on which this case turns is § 19.2 (a) which provides in relevant part:

> "That no person, while on public or private grounds adjacent to any building in which a school or any class thereof is in session, shall willfully make or assist in the making of any noise or diversion which disturbs or tends to disturb the peace or good order of such school session or class thereof."

Appellant was one of 200 people picketing a school and carrying signs promoting a Black cause—"Black cheerleaders to cheer too," "Black history with black teachers," "We want our rights" and the like. Appellant, however, did not himself carry a picket sign. There was no evidence that he yelled or made any noise whatsoever. Indeed, the evidence reveals that appellant simply marched quietly and on one occasion raised his arm in the "power to the people" salute.

The picketers were mostly students; but they included former students, parents of students, and concerned citizens. They had made proposals to the school board on their demands and were turned down. Hence the picketing. The picketing was mostly by black students who were counselled and advised by a faculty member of the

school. The school contained 1,800 students. Those counselling the students advised they must be quiet, walk hand in hand, no whispering, no talking.

Twenty-five policemen were stationed nearby. There was noise but most of it was produced by the police who used loudspeakers to explain the local ordinance and to announce that arrests might be made. The picketing did not stop and some 40 demonstrators, including appellant, were arrested.

The picketing lasted 20 to 30 minutes and some students went to the windows of the classrooms to observe it. It is not clear how many there were. The picketing was, however, orderly or as one officer testified "very orderly." There was no violence. And appellant made no noise whatever.

What Mr. Justice Roberts said in *Hague* v. *CIO*, 307 U. S. 496, 515–516, has never been questioned:

> "Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens. The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied."

We held in *Cox* v. *Louisiana*, 379 U. S. 536, 544–545, that a State could not infringe a person's right of free

speech and free assembly by convicting him under a "disturbing the peace" ordinance where all that the students in that case did was to protest segregation and discrimination against Blacks by peaceably assembling and marching to the courthouse where they sang, prayed, and listened to a speech, but where there was no violence, no rioting, no boisterous conduct.

The school where the present picketing occurred was the center of a racial conflict. Most of the picketers were indeed students in the school. The dispute doubtless disturbed the school; and the blaring of the loudspeakers of the police was certainly a "noise or diversion" in the meaning of the ordinance. But there was no evidence that appellant was noisy or boisterous or rowdy. He walked quietly and in an orderly manner. As I read this record the disruptive force loosened at this school was an issue dealing with race—an issue that is preeminently one for solution by First Amendment means.* That is all that was done here; and the entire picketing, including appellant's part in it, was done in the best First Amendment tradition.

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*The majority asserts that "appellant's sole claim . . . is that he was convicted under facially unconstitutional ordinances" and that there is, therefore, no occasion to consider whether his activities were protected by the First Amendment. *Ante*, at 2 n. 1. Appellant argues, however, that the ordinance is overly broad in that it punishes constitutionally protected activity. A statute may withstand an overbreadth attack "only if, as authoritatively construed . . . , it is not susceptible of application to speech . . . that is protected by the First and Fourteenth Amendments." *Gooding* v. *Wilson*, 405 U. S. —, — (1972). If the ordinance applies to appellant's activities and if appellant's activities are constitutionally protected, then the ordinance is overly broad and, thus, unconstitutional. There is no merit, therefore, to the Court's suggestion that the question whether "appellant's particular behavior was protected by the First Amendment," *ante*, at 2 n. 1, is not properly presented.